
A REVIEW
OF THE
PROCEEDINGS AND ARGUMENTS
IN
A CAUSE IN CHANCERY,
BETWEEN
JAMES FOX, ESQ. AND ROBERT MACKRETH, ESQ.

1793



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IN WHICH
LORD KENYON, then Master of the Rolls, pronounced a DECREE in
Favour of Mr. Fox; which was affirmed by the LORD CHANCELLOR
on an Appeal to him; and, on a further Appeal, re-affirmed in the
HOUSE of LORDS:

WHEREIN
THE CONDUCT OF MR. MACKRETH,
In the TRANSACTIONS, which are involved in and produced the CAUSE,
is defended;—the CHARGES of the COUNSEL, employed by Mr. Fox,
refuted;—and Mr. MACKRETH'S CHARACTER fully and completely
rescued from the IMPUTATIONS of the DECREE.

BY A RETIRED BARRISTER.

1792.

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TO THE PUBLIC.

WHEN a Cause has been decided by the Master of the Rolls, —when the Decree pronounced by him has been affirmed by the Lord Chancellor,—and re-affirmed in the House of Lords,—it may be said,—What has the Public to do with it?—I thank God, that, in this country, the public has yet a concern, and a power; not, indeed, of repeal,—but of review: and it is wisely ordained, that the Judges shall give their opinions and pronounce their decisions in open court, that the public may exercise this valuable prerogative. It is not only an admirable and efficacious restraint on the conduct of our Judges, but it proves also, and not unfrequently, a remedy for their error or injustice. For it often happens that their decision not only affects the property, but the reputation of parties who have been in litigation before them; and though the popular opinion cannot restore the property, which the error, the prejudice, or the inability of any Judge may have passed away; it can perform a superior office, because it relates to a superior object,—it can re-establish that Character which has been wounded by the erroneous determination of a Court of Law.

It is on this principle, and with this hope, that I have undertaken to plead the Cause of a Man, who, I think, has suffered injustice from the law, and therefore looks for justice from the public.

If the Decree of which Mr. Mackreth complains had extended no further than the property which was in dispute between Mr. Fox and himself, he would have been contented with adding it, as another item, to the losses he has sustained in the service of private friendship, and I should not

have come forward as his advocate against any judicial decision, that might have deprived him, however unjustly, of any part of his fortune.— But this Decree, as it appears to me, was founded solely on a conclusion, that Mr. Mackreth, in his concerns with Mr. Fox, had not demeaned himself as an honourable man; and it is this stigma on his reputation, which I now offer to the indulgent attention of the public, in order to prove, that it has no foundation even in evidence in the cause, much less in justice and in truth.

While a cause is in its progress to a decision, whatever may tend to create prejudice, or inflame the passions, is criminal, as well as unjust: but when the process is brought to a conclusion,—when the matter in dispute is finally decided, a freedom of inquiry into the conduct and opinions of the Judges belongs, in this country, to any man who chooses to exercise it; but much more to him, who considers himself as aggrieved by it.

That the Judges of this country are men of experience, knowledge, and integrity, I am not only willing, but proud to acknowledge. They, however, are but men; and, like other men, liable to error,—like other men, not always superior to prejudice,—nor always confident enough to stand firm against overbearing authorities,—nor always cautious enough to guard against insinuation,—nor always sufficiently masters of themselves to separate all their past lives and thoughts from the cause before them. They who live in the habits of attending Courts of Law, may be occasional witnesses of these things. Indeed, it is on this ground of fallibility even in men who are peculiarly appointed to judge of whatever concerns the property, the reputation, and the security of mankind, that a power of appeal is given to those who think themselves aggrieved by inferior decisions: and, indeed, such is the melancholy imperfection of the best institutions, that the well-conceived power of appeal may sometimes prove abortive,—that all the various gradations of justice may be but as so many links in the chain of error,—and that, from the partiality of the different ranks of judges to

each other, the unpleasing duty of pronouncing upon each others errors, a delusion may be worked up, and the Supreme Court of Judicature confirm the injustice of inferior jurisdictions.

I will suppose, for example, that a barrister of eminence is consulted upon the propriety of commencing a suit, and the probable issue of it. I will also suppose, that, from the premises stated to him, he not only advises the suit, but actually pleads in an early process of it, and is afterwards appointed to be a judge in the court where he had been an advocate.—We will now proceed, and consider him as called upon to decide in the very suit which was at first instituted, and afterwards conducted, by his council and opinion. May it not also be supposed, without imputing any deliberate partiality, that the zeal and prejudices acquired at the bar, might be transferred to the bench, and that the brief of the advocate would, in some measure, influence the decree of the judge?

Under that idea, or from the common operating motives on these occasions, we may feign an appeal to be made to a superior court, the judge of which entertains the highest opinion of, and lives in the most bosom confidence with, the very man, whose decision it becomes his duty to reverse or confirm. In this case, is it not very probable that the high opinion entertained of the professional talents and virtue of the inferior judge, may operate in the mind of the superior, to confirm the decree in direct opposition to his own real sentiments?—The Supreme Court of Judicature, however, is still open, and to that, by way of *dernier* resort, the unsuccessful party makes his last appeal—But when we consider that, in this court, the two judges, who have in regular succession decided the cause, have, in judicial matters, a very prevailing influence;—what can be hoped, or expected, but that the Decree will there find a further and final confirmation?

It is upon such a possible concurrence of circumstances alone, that the original Decree in this cause, and the subsequent confirmations of it, can be reconciled to the truth of the case. But such is the lamentable state

of our common nature, that we must, I fear, even in the most important circumstances of life, as often look for the causes of things in human infirmity, as in human excellence.

In the supposed case I have just stated, I am, surely, understood to allude to those courts of judicature, where the judge decides from his own unassisted opinion. In trials by juries there is certainly a much more reasonable ground for relying on a just decision; and appeals, therefore, are but rarely made from the verdict of twelve impartial men, but from motives of chicane, and an abuse of the privilege of appealing.

Every man who appeals, declares to all the world, that he believes the judge who has decided against him, to have made an unjust decision; and, if he has a right, in the first instance, to say his judges have erred, he may say it in the last. If the judgment of the Master of the Rolls, and the Lord Chancellor, may be declared to be erroneous, by the individual who suffers by them, or the lawyer who has heard, or the speculative man who considers them; the same privilege remains when those Law Officers confirm their former judgments, in another and superior tribunal. They certainly do not become infallible by removing from their own Courts to the House of Lords; and their fallibility may be as rightful objects of discrimination in the one as in the other.

I shall not, therefore, hesitate to declare, what I have no doubt but the following pages will prove, to the conviction of every man who gives them an attentive and impartial examination,—That the Decree of the Master of the Rolls, in the cause between Mr. J. Fox and Mr. Mackreth, is not founded on any known principles of justice.

I feel all the respect that becomes me for the grave decisions of such men as preside in our courts of judicature; and I entered upon the examination of that before me, with an awful prejudice in favour of their justice; but, on the most sober and attentive inquisition into all the circumstances of the case, and, after duly weighing all the arguments of the

counsel on both sides, precisely as they were delivered at the different hearings, I declare it to be my most solemn opinion, that Mr. Mackreth has been greatly aggrieved, both in his property and character, by the decisions of this long, expensive, and harassing litigation.

It is, therefore, to wipe away every stain from his name, and every imputation from his character, that I have been induced to employ the leisure of my retirement, and to return once more to those professional speculations, which I thought that I had abandoned for ever.—I am not ashamed of the motive to this publication, nor do I fear the success of it:—it is written in defence of a man who deserves well of mankind. I never had occasion to apply to his friendship; but if necessity should overtake me, there is no man to whose kindness, or humanity, I would so soon apply.—Numerous instances of the most disinterested generosity, on his part, are known to me, and to all who know him as I do: and if it were necessary, I could confirm my testimony to his worth, by the testimonies of those whose gratitude is ready to produce them, and whose names would not leave a doubt on the man they honoured with their regard.

Mr. Mackreth may have employed a part of his fortune in commercial speculations; and I have some reason to believe, that, in the business of profit and loss, the balance is against him. But be that as it may, I know his benevolent and humane actions to be many, and from the best emotions; and I have no doubt but they will stand him in good stead, when he shall be for ever removed from the exercise of them.

His success in life has been, and will, I doubt not, continue to be, the subject of envious and malignant observation; but I know nothing in the course of it, that reflects dishonour upon him. Whoever acts well in his station, be it what it may, will be considered with respect by every wise man. Pride may scoff, and folly may jeer, but the good sense of mankind will not be affected either by the one, or the other,—it will despise them both. Every man in this country may push forward to eminence,—

and may, in time, attain it. Subalterns in the inferior departments of government, have risen to the peerage; and the lowest clerk in an attorney's office, has gradually proceeded to the first stations of the law. Mr. Mackreth, while he despises the petty distinctions of low and envious minds, is anxious to deserve the good opinion of those, whose good opinion is worth possessing. He feels as a man ought to feel, the misfortune of that injustice which his Character has received from the Decree; and he feels rather more, I think, than he ought, all the various ramifications of scandal and calumny which have branched from it, by the perverting and falsifying spirit of the world. From such petty evils as these, he may surely find a secure and consolatory asylum in the habitual esteem of men respectable from their station, and eminent for their virtues: nor can he forget, that from the violent and irregular obloquy with which he was treated by the gentlemen of the robe employed against him, he found an honourable protection in the zeal and friendship of Mr. Ambler, who, after a retirement of three years, returned once more to the bar, and closed a professional life of the first professional honour, in pleading with superior ability, and from the most rooted conviction, the cause of his friend.

I thought it my duty, in this place, to make these observations on the character of Mr. Mackreth, in order to damp, in some degree, the activity of that prejudice which the event of this cause has too generally, and most undeservedly, raised against him; and bring the minds of those readers who have been taught to think unfavourably of him, to such a state, at least, of composed impartiality, as may qualify them in their passage through the following pages, to form a deliberate and unerring judgment upon the arguments employed in them.

These arguments are applied to the illustration of all the transactions that took place between Mr. Fox, and Mr. Mackreth. Several of them relate to pecuniary accommodations, made by Mr. Mackreth, to relieve

the pressing distresses of Mr. Fox, and were introduced into the cause, with no common art, to give, if possible, an unfavourable colour to, and divert the attention from, the leading and sole object of it;—*Whether the estate purchased by Mr. Mackreth of Mr. Fox, was obtained for a fair and adequate price.*

The Master of the Rolls acknowledges, that if Mr. Mackreth originally gave the full value for the estate, there is an end of the business, and that it can be affected by no subsequent transaction whatever. And, on the proof that he gave considerably more than the real value of it, I will rest the issue of this volume. It is impossible, with any the least appearance of justice, to strain the point further against Mr. Mackreth, than to say that there was a doubt upon the question: and, if that were the truth, the natural and most certain mode of settling it, was to send it to the determination of a jury. This was the leading object of Mr. Mackreth's counsel, which was anxiously combated, and with success, by the advocates of Mr. Fox; and the Court decreed that Mr. Mackreth took an undue advantage of an unlimited confidence reposed in him by Mr. Fox, to purchase the estate for an inadequate consideration.

It would be premature, in this place, to say more upon the subject; and I shall not keep the reader any longer from the detail at large, which is given of it in the following pages, than is necessary to state the mode I have adopted in the discussion of it.

I have first given, as I hope it will appear, with a most studious impartiality, and collected from the statements of both parties, a plain Narrative of all the Transactions which took place between Mr. Fox and Mr. Mackreth. To this succeeds an account of the cause from its first institution, in all its positions, and with all its circumstances, whether of evidence or decision, till its final determination in the House of Lords. I then state every argument that has been employed by the counsel of Mr. Fox, at the different hearings, with the operating opinions of the different

Judges, at those hearings,—all in their order ;—and in their order I give distinct answers to them all.

It is almost impossible to make the history of a Chancery Suit interesting to any but those who, from various motives, are or may become interested in it: and it is very difficult to render it even intelligible to those who have not some acquaintance with equity proceedings. In Courts of Law, the common subjects of decision, are the common actions of men's lives, and are intelligible to all. In a Court of Chancery, the pleadings relate frequently to a species of possession and property, whose nature and descriptions are clothed in terms that are intelligible to few. I have endeavoured, as much as is in my power, and wherever the technical preciseness of legal description would allow me, to translate the expressions of law into the language of the world.—After all, I believe the case is so stated as to be generally understood:—nor will there, I trust, be any, among its readers, who will find the arguments produced upon it, a trouble to their comprehension.

It is impossible in relating a case of this nature, whose circumstances are so various, and withal so blended with each other, and where the anxious desire for perspicuity never left me for a moment, to avoid the repetition of things already repeated, or intruding references to arguments already employed. If, however, this work should beget,—and wherefore should it not?—the same conviction in the minds of those who read it, as it has rooted in the mind of him who has written it,—the errors of the Decree which it investigates will be, in some measure, redeemed;—the wound made, by that Decree, in Mr. Mackreth's reputation will be healed, and I shall be most happy in having employed my talents, such as they are, in the cause of friendship and of truth.

If after all, I should fail, in transferring the conviction of my breast, to the bosoms of others, it will not proceed from any defect in the cause, but from the inability of the advocate.—I hope, however, for better

things. It may be, perhaps, an idle vanity,—a presumption, in me, which the zeal of friendship may have called forth and encouraged;—but such is my opinion of the Defence I have written, that I doubt not, but every impartial, attentive, and discerning reader, when he comes to the last line of it, will feel in his mind the indignant sentiment,—that he had rather be the man who is the victim of the Decree, than the Judge who pronounced it.

PLAIN STATE OF THE CASE.

IT is necessary previously to observe, that Mr. James Fox, the original Plaintiff in this cause, attained the age of twenty-one years in August, 1777, which was some time previous to the commencement of his acquaintance with Mr. Mackreth. At this period his fortune was great in possession, and great in expectancy. He was tenant in tail of a freehold estate, at East Horseley and Cobham, in the county of Surry, which, including a small portion of Leasehold and Copyhold property, was about the yearly value of 1246*l.* 18*s.* subject to his mother's jointure. He was also tenant for life in possession of a real estate in Yorkshire, and elsewhere in England, of about 1300*l.* a year, and of real estates in Ireland of about 6000*l.* subject to certain incumbrances; and of some money, directed by Lord Bingley's will to be laid out in lands. He was likewise entitled in remainder, for his life, expectant on the decease of the survivor of Sir John and Lady Goodrick, to other real estates, in England, of about 6000*l. per annum.*

It must also be stated,—that, having engaged in a very early course of dissipation and extravagance, Mr. Fox, in the year 1773, was already involved in debt, to the amount of 26,000*l.*; and, in consequence of

his premature embarrassments, it was proposed by Mr. Oliver Farrer, who had already been employed, as a Solicitor, in the affairs of Mr. Fox, that, as soon as he came of age, the Surry estate should be sold, in order to discharge him from his incumbrances, and that every necessary arrangement should be made preparatory to that object. It is, however, necessary to add, that the four succeeding years of his minority were marked with an increasing dissipation and imprudence, so that when he came of age, he was involved in debts to the amount of 50,000*l.* in securities for great part of which, many of his fashionable friends and acquaintance were joined with him.

In this situation, and shortly after his coming of age, Mr. Fox finding himself deserted, as it were, by the friends of his family, and Mr. Farrer his Solicitor, and no steps having been taken to put the proposed plan of selling the Surry estate in execution, in order to silence the clamours, and satisfy the demands, of his creditors;—he very naturally applied to the Reverend Doctor Shepherd, who had been his tutor, to assist him with his friendly counsels, in the distressing position of his affairs. That gentleman, therefore, being acquainted with Mr. Mackreth, and knowing, in common with every one who knows him, the general humanity of his character, and the means he possesses of indulging it, applied to him on this very pressing occasion. He represented the extravagant disposition of his late pupil, the very mortifying situation to which that disposition had reduced him, and the consequent extreme want of money, beneath which he laboured. This communication was shortly followed by a personal application from Mr. Fox himself to Mr. Mackreth, to afford him that immediate assistance which Dr. Shepherd had previously stated the pressing necessities of Mr. Fox required.

To this requisition, Mr. Mackreth did not return a moment's hesitation, but declared his instant wish to comply with the request, on having a proper security by way of mortgage. In answer to this proposition,

Mr. Fox observed, that it was impossible for him to give the security required, till he had cut off the entail of the Surry estate, which could not be done in time to relieve the urgent wants of the moment ; and, therefore, he could offer no better security, for he had then no other to give, than the grant of an Annuity.

No other mode being suggested to supply the wants and alleviate the distresses of Mr. Fox, John Dawes, Esq. and Mr. Mackreth agreed to give 5100*l.*—being at the rate of six years purchase, the common market price, for two Annuities, one of 500*l.* and the other of 350*l.* during the life of Mr. Fox, who received that sum from Mr. Dawes, for himself and Mr. Mackreth, September 23, 1777. Accordingly, Mr. Fox secured each of the Annuities by a separate Bond and Warrant of Attorney, for confessing judgment to Mr. Dawes, and by a separate Demise of his estates in Yorkshire for 99 years, if he should so long live, in trust for the due payment of the said Annuities.—The reason for giving separate securities arose from the circumstance, that Mr. Dawes and Mackreth were equally interested in the Annuity of 500*l.* and that Mr. Dawes was solely interested in the Annuity of 350*l.*

In Michaelmas Term, 1777, Mr. Fox suffered a Recovery of his Surry estate ; the uses of which, with an exception of the jointure of Mrs. Fox, were vested in Mr. Oliver Farrer, &c. upon trust to convey the same as Mr. Fox should direct.

In a very short time after this Recovery was suffered, Mr. Fox, being shut up in his lodgings, and afraid of passing the door of the house, on account of the Sheriff's Officers, who were continually on the watch to arrest him, he applied to Mr. Mackreth to deliver him from this mortifying dilemma, by advancing him 2000*l.* which was afterwards increased to 3000*l.* on a mortgage of the Surry estate. This request was granted by Mr. Mackreth, with such an accommodating dispatch, that, in order to prevent any delay by examining the Title Deeds, he actually relied on Mr.

Farrer's parole declaration, that the Title of the estate was a good one. Mr. Farrer also approved the draft of the mortgage, and joined in the conveyance.

The original plan, already mentioned, which had been suggested by the friends of Mr. Fox, to extricate him from his difficulties, on his coming of age, being abandoned or neglected,—it was proposed by Mr. Fox to Mr. Mackreth, about the time of the execution of the mortgage, to become a trustee, for the purpose of executing that design. The offer of such a trust was readily accepted by Mr. Mackreth, who proposed Mr. Dawes to be a co-trustee, as a person, whose eminence as an Exchange Broker, particularly qualified him to deal with advantage for the redemption of the various Annuities which had been granted by Mr. Fox. This proposal received an immediate assent from Mr. Fox, who directed Mr. Garforth, the Solicitor of Mr. Mackreth, to prepare the proper conveyances, and consult with Mr. Farrer on the speedy completion of the business.

On the 6th January, 1778, Mr. Garforth having previously read over and explained the Draft of the Trust Conveyance to Mr. Fox, as settled by Mr. Robert Burton, the Counsel employed in these transactions, sent it to Mr. Farrer to be perused on the part of Mr. Fox.

On the 8th January, it was proposed to Mr. Mackreth on the part of Mr. Fox, that he should take up the two Annuities of 500*l.* and 350*l.* for Mr. Fox, and should also lend him a further sum on his Surry estate for his own immediate use. To this proposal Mr. Mackreth assented; and it was agreed, that he should advance 7000*l.* on the security of the Surry estate;—that out of the 7000*l.* the Annuities should be repurchased for Mr. Fox, at their original price, and the arrears of those Annuities be paid up to the time, when such security should be given,—and that the remainder of the 7000*l.* should be paid to Mr. Fox. Accordingly, Mr. Garforth was instructed to frame the proposed security.

In January 14, Mr. Garforth, having made some alterations in the Deed of Trust, in conformity to the suggestions of Mr. Farrer, and which had been approved by Mr. Burton; and being very much pressed by Mr. Fox, he caused the Draft of the Deed for the further charge of 7000*l.* and interest, to be endorsed on the Indenture of Release and Mortgage of the Surry estate to Mr. Mackreth for 3000*l.*

A Rental of the estate was also delivered to Mr. Mackreth, but *without any valuation*, and the deeds being engrossed, the 16th of January was appointed for the execution of them at Mr. Garforth's house, in Lower Brook Street, Grosvenor Square. On that day the parties met, and, after dinner, Mr. Fox proposed, and expressed a wish, that instead of becoming a trustee, Mr. Mackreth would, at once, become a purchaser of the estate in question. That gentleman expressing no disinclination to listen to the proposal, Mr. Fox immediately produced a rental and valuation made by Mr. Jackman, a surveyor, who had been employed by him for that purpose, by which the estate was valued at 45,000*l.*—and demanded that price for it.

The gross rental, produced on this occasion, with a supposed improvement of the rents of 72*l.* 15*s.* amounted to 1319*l.* 13*s.*:—295*l.* of which consisted of a mill, houses, cottages, and small chief rents. The profits of Cobham manor, computed at 80*l.* *per annum*, was estimated at *forty years* purchase; the rest, including the mansion-house, mill, cottages, &c. were estimated at *thirty-two years* purchase.

Mr. Mackreth, considering this valuation as very extravagant, made a calculation at the moment, and offered 37,853*l.* 14*s.* for the estate, including the wood, which was valued at 4000*l.* in the estimate, and the furniture of the house, which was mutually valued by themselves at 500*l.* In this calculation, he valued the mill, houses, and cottages at *fourteen years* purchase, and the land at *thirty*. After some further consideration, Mr. Fox proposed to sink his price to 42,000*l.* which Mr. Mackreth refused.

to give; but after some further consideration, offered a medium price of 39,500*l.* provided Mr. Fox would discharge the estate of his mother's jointure. This offer not being accepted, the first deeds were executed by Mr. Fox; but before they were taken away, or attested, Mr. Fox urged Mr. Mackreth to reconsider his proposal, and, after another long conversation, which trailed on till twelve o'clock at night, Mr. Fox agreed to accept the medium price, on condition that Mr. Mackreth would subject himself to the payment of Mrs. Fox's jointure, in case she should survive her son. Mr. Mackreth having consented to this proposition, Mr. Garforth, who was engaged in another room, was then sent for, and from their mutual instructions, drew up the following memorandum, which was signed by them both.

" 16th January, 1778.—Mr. James Fox agrees to sell his estate in
 " Surry, to Mr. Mackreth, for 39,500*l.* with the furniture, and other
 " things, at his capital mansion, at Horseley, except plate, linen, books, and
 " family pictures; to be paid on or before the 25th March, 1778; and
 " Mr. James Fox to receive the rents and profits up to the said 25th
 " March next; and, on or before that time, to convey said estates, clear
 " of all incumbrances, except 4*l.* a year for Bishop's mead, and a copy-
 " hold rent of 40*s.* a year, for an estate in the parish of Bookham."

It was also agreed by those gentlemen to meet again about the 27th of January, in order to execute full articles for the sale of this estate; and Mr. Garforth received their directions to prepare them. These articles being approved by Mr. Burton, two parts of them were engrossed for execution, in which blanks were left for the amount of the annuity or jointure payable to Mrs. Fox, and for the days of payment.

On the 28th of January, Mr. Garforth waited upon Mr. Mackreth with one part of the articles, which he executed, the blank left for Mrs. Fox's jointure being first filled up with 240*l.* according to the particular of the Surry estate, which Mr. Mackreth had received from Mr. Fox. On the

same day also he attended Mr. Fox, who executed the other part of the articles, having first, with his own hand, filled up the blank, left for his mother's jointure, with the words 300*l.* and also the blanks for the days of payment; declaring at the same time, that he would satisfy Mr. Mackreth, that the jointure was in fact 300*l.* instead of 240*l. per annum.*

In consequence of this unexpected alteration, Mr. Garforth immediately returned to Mr. Mackreth, and informing him of the circumstance, he answered, that he considered Mr. Fox to be a man of honour, who would, of course, make him an allowance for the additional 60*l. per annum* to the jointure, and, therefore, re-executed the articles with the alteration made by Mr. Fox, to whom they were immediately delivered.

This agreement was not carried into execution, nor the estate conveyed till the 28th of April following. The mode of arranging the business was settled to be in the following manner:—It was agreed that Mr. Mackreth should retain out of the purchase money what was owing to him, and keep the remainder in his hands, as a trustee, to be applied in payment of Mr. Fox's debts.—3000*l.* and interest, was due on the Mortgage;—the redemption and arrears of the Annuities, with the advancement of a small sum of money, made up 7000*l.*:—These respective sums, therefore, with some others paid by Mr. Mackreth on account of Mr. Fox, made, together, the sum of 11,097*l.* which, being deducted from the total of the purchase money, left the sum of 28,403*l.*

The Draft for the Conveyance of the estate, and the assignment of the remainder of the purchase money, being settled by Mr. Burton on the part of Mr. Mackreth, were sent to Mr. Farrer, to be examined by him on the part of Mr. Fox. That gentleman made certain memorandums on the margin of the Draft of Conveyance, with a view to particular alterations in certain parts and clauses of it; and objected entirely to the assignment, because it left the remainder of the purchase money in Mr. Mack-

reth's hands, instead of depositing it with a banker, and allowed him too uncontrouled a power over the disposition of it. Which objections, &c. are stated at large in a letter he wrote to Mr. Mackreth on the occasion.— (See this letter in the Appendix.)

Mr. Fox having been for some time at Paris, returned to England on the 17th of April, 1778; and being informed of Mr. Farrer's objections to the deeds, by Mr. Garforth, who shewed him the letter written by Mr. Farrer on the subject, he declared it to be his opinion, that the objections were not of sufficient weight to retard the business, which he requested might be finished with all possible expedition.

On the 25th of April the deeds were executed, and Mr. Mackreth gave to Mr. Fox an accountable receipt, with a charge on the Surry estate, for the sum of 28,403*l.* with interest at five *per cent.* on demand; which sum, the remainder of the purchase money, was thus retained by Mr. Mackreth, on account of the annuity and judgment debts of Mr. Fox, which, by the terms of the contract already mentioned, were to be satisfied out of it:— The receipt, with a charge of the money upon the estate itself, being considered by the parties as an adequate substitution for the assignment objected to by Mr. Farrer. The money was afterwards applied by Mr. Mackreth according to the directions of Mr. Fox, and an account given of its disposition, in which Mr. Mackreth allows interest for weeks, and even days, on all the varying sums which, from time to time, remained in his hands.

About two months after the signing the articles of agreement for the purchase and sale of the Surry estate, that is to say, on or about the 20th of March, 1778, Mr. Page applied to Mr. Mackreth by his son, in order to purchase of him either the whole or part of the said estate; and the latter expressing a readiness to sell the whole, a meeting was had on the following day, between the parties, at Mr. Mount's, a Stationer, on Tower Hill, when Mr. Page offered to purchase the whole for 50,500*l.*; but no further

steps were taken in this business, nor any agreement made in writing, till after the estate was actually conveyed to Mr. Mackreth.

On the 30th of October, 1778, Mr. Mackreth, at the earnest solicitation of Mr. Fox, settled the account, and paid the balance, being 773*l.* 18*s.* 9*d.* to Mr. Farrer, by order of Mr. Fox; credit having been taken for two annuities, not as *paid*, but as *to be paid*:—And Mr. Mackreth having afterwards compromised these two annuities for a less sum than had been reserved for that purpose, the difference, with a few other disbursements for the use of Mr. Fox, and the calculations of interest, occasioned a second account, which was made up to May 2d, 1781, and produced another balance in favour of Mr. Fox, to the amount of 617*l.* 13*s.* which, however, was retained by Mr. Mackreth, to answer certain deficiencies which had been discovered in the Surry estate, as well as to satisfy the arrears of an annuity previously sold by Mr. Fox to Mr. Mackreth, as will be immediately stated.

Some time in the year 1779, at the earnest solicitations of Mr. Fox, Mr. Mackreth had lent him 1000*l.* on his bond; and afterwards, at his earnest and repeated importunities, advanced him as much more, as with the 1000*l.* and interest, made together the sum of 2100*l.* for which Mr. Fox granted Mr. Mackreth an Annuity of 350*l.* for the life of the grantor.

It having, in the mean time, been discovered that a part of the Surry estate, which had been conveyed to Mr. Mackreth, and by him to Mr. Page, and by the latter to Mr. Durnford, as freehold, was of copyhold tenure,—Mr. Fox, in consequence of a previous application from Mr. Mackreth, executed a Letter of Attorney, dated August 30th, 1779, authorising Messrs. James Hutchinson and Bury Hutchinson, as his attornies, to appear at the next or any other Court Baron of the Manor of Thorncroft, in Surry, and to procure his admission to a part of the Surry estate, which had been sold by him to Mr. Mackreth as freehold, and, in the name of Mr. Fox, to

surrender it to the use of Mr. Durnford, who had purchased it from Mr. Page.

Mr. Mackreth applied also, in November, 1779, to Mr. Fox, at the desire of Mr. Page, who had already mortgaged one part of the Surry estate, to accommodate a mortgage he was about to grant of another part, by executing duplicates of the following deeds: viz.

The bargain and sale from Mr. Fox and his mother, declaring the uses of the recovery in Michaelmas term, 1777;—The mortgage in fee, by lease and release, from Mr. Fox and his trustee, Mr. Oliver Farrer, to Mr. Mackreth, in December, 1777;—The further mortgage by indorsement on the release;—And the absolute conveyance by lease and release from Mr. Fox and his mother to Mr. Mackreth in April, 1778.

The duplicates of all these various deeds, in order to accommodate Mr. Page's second mortgage, the first mortgager being in possession of the originals, were executed by Mr. Fox, on December 5th, 1779:—But this is not all, for he readily attended his mother to obtain the execution of those to which she was a party; and, at the same time, wrote to Mr. Farrer, to desire his execution of the duplicate deeds, in which he was a party: but to this request of Mr. Fox he refused to accede, unless the reasons for which the deeds were to be executed by him were indorsed upon them. It appearing, however, that Mr. Farrer's execution was not material, his conditions were resisted, and the duplicates already described, were not executed by him.

On the second day of June, 1781, Mr. Fox filed a Bill in Chancery against Mr. Mackreth and others, which, after charging him with having engaged in money transactions with Mr. Fox, previous to his coming of age; and that, at the time he bought the Surry estate, he knew that he could sell the same to Mr. Page for the advanced price which that gentleman had given for it; and, after representing Mr. Mackreth as acting, in all his concerns with Mr. Fox, with a sole view to his own interest, as well

as taking the most undue advantage to promote the same,—prays,—that the sale of the Surry estate by Mr. Mackreth to Mr. Page, may be decreed to be made in trust for Mr. Fox, and that Mr. Mackreth may account to him for the money arising from the sale thereof, with interest, &c. &c. &c.

On the eleventh day of February, 1782, Mr. Mackreth put in his answer, in which he, in the most positive and unequivocal manner, denies these several charges, &c. &c. &c.

It would not only be perplexing, but superfluous, to enter, at this time, into all the various matters stated by the bill and answers of the parties in this cause, as they will appear in the arguments, which will be hereafter offered on the several parts of the case.

Though not in fact a part of the cause between Mr. Fox and Mr. Mackreth, it may be proper to mention in this place, that about a month before Mr. Fox filed his bill to compel Mr. Mackreth to refund the sum of 11,000*l.* being the advantage gained by him from the sale of the estate to Mr. Page, Mr. Thomas Page, his son and executor, for the father was now dead, had filed a bill against Mr. Mackreth, to compel him to repay to his father's estate, such sum, or sums, already received by him, for the sale of the Surry estate, as should appear to exceed the real value of the same, or to allow them out of such money as might be coming to him on that account, &c.—so that Mr. Mackreth was, at this time, the object of two suits in Chancery relative to the Surry estate,—the one charging him with having bought it too cheap,—and the other with selling it too dear; and both claiming upon these different principles,—the specific difference between the price of the purchase, and the price of the sale.

But to proceed.—

An injunction having been obtained to restrain Mr. Mackreth from proceeding at law for the recovery of the arrears of his annuity of 350*l.* a motion was made in the Court of Chancery for dissolving the same, which came on to be heard the 2d of March, 1782; and, after being fully argued,

the Lord Chancellor ordered the Injunction to be dissolved.—His Lordship delivered the following opinion on the occasion.

“ It is impossible to observe that one fifth more has been paid
 “ for the estate, and not wish that the first owner should have the
 “ advantage. I have tried on the head of every one observation,
 “ whether I could decree that Mackreth should be a trustee for Fox,
 “ for the difference of value in the estate. I attended, with great
 “ care, to see whether I could find any surprise on Mr. Fox; but
 “ the whole of the case begins and ends with the circumstance of
 “ an advantage being made in point of price. If Mackreth had
 “ sold the estate to A. being a Trustee for Fox, the case could not
 “ have stood; but Mackreth lost the character of a Trustee, when
 “ he became a Purchaser of the estate. The rental was extended
 “ into particulars, for the purpose of calculating the true value of
 “ the estate. It was not argued that the rental was unfair: Jack-
 “ man’s valuation was pressed by Mr. Fox on Mr. Mackreth; de-
 “ liberation was had, and the difference was split between them. A
 “ slight memorandum was made by Mr. Garforth, who acted as
 “ agent for Fox.—This memorandum was laid before Mr. Burton
 “ at the bar. It is not till the 28th of January that the agreement is
 “ signed by Fox; but it is a deliberate act by Fox, at the distance
 “ of twelve days. The whole impeachment of the transaction,
 “ which is now opened, is upon the difference of price. It does
 “ not appear to me that, at the time of the purchase, a *greater price*
 “ could have been produced in the common course of business of
 “ the sale of estates.

After this opinion of the Lord Chancellor, which appears to be decidedly against Mr. Fox, the cause was suffered to lie dormant for upwards of two years, except a replication to Mr. Dawes’s Answer, on July 5th, 1782,

and to the Answers of Mr. Mackreth and Mr. Garforth, on the 20th May, 1784.

Before any further proceedings were had in this cause, Mr. Fox, by an Indenture dated May 28th, 1782, assigned all sums of money due to him in a cause in which he was plaintiff against Godschall and others, or in any other cause, and all other his personal estate and effects, to William Morton Pitt, Henry Hoare, James and Oliver Farrer, upon various trusts therein mentioned. In consequence of this assignment, the trustees, on the 3d of August, 1784, filed a supplemental bill against Mr. Mackreth and others, which was amended in March 1785, and, after stating the original bill of Mr. Fox, the indenture just mentioned, and that Oliver Farrer had released all his right, &c. under the said indenture, prayed that they might have the benefit and advantage of the said suit and proceedings, and the same relief against the defendants, as is prayed by the original bill.

To this supplemental bill, the respective defendants put in their several answers; and the cause being at issue, witnesses were examined on each side in March, May, and June, of the year 1786.

ON THE PART OF MR. JAMES FOX,

Mr. Jackman, a surveyor, deposes to his valuation of the Surry estate, made in the year 1776, at the sum of 45,000*l.* subject to the life-interest of Mrs. Fox, and exclusive of the furniture in the mansion house at East Horseley.

Edward Wastell, upholsterer, deposes that previous to Mr. Mackreth's purchase of the estate, he had sent furniture into the house at East Horseley, to the amount of 533*l.* 18*s.* 8 $\frac{1}{4}$ *d.* for which he was paid by Mr. Fox.

Anne Fleming, housekeeper at Horseley, deposes that there was furniture of value in the house, before the additional articles sent in by Wastell: and that in December 1777, *Mr. Mackreth wrote her a letter*, which she has since destroyed or lost, wherein *he informed her, in Mr. Fox's*

name, that a person would come to Horseley to look over the estate ;—that a Mr. Hampton did accordingly come there the latter end of December, and stayed some days for that purpose ; and that, about the middle of January 1778, he came a second time, and stayed best part of five or six weeks, and, as she believes, was employed in making a valuation of the estate and timber.

W. Thorpe, nephew of W. Hampton, surveyor, deceased, proves from his uncle's memorandum book, that he was at Horseley, by order of Mr. Mackreth, from January 8th, to January 17th, 1778 ; and from February 2d, to the 27th ; and from March 2d to the 13th, of the same year : for which attendances, and their incidental expences, he makes specific charges ; but without any charge for an *actual valuation*.

(Though this employment and attendance of Hampton is not legally in issue, because not being charged in the bill, it could not be noticed or denied in the answer ; and, for the same reason, not competent evidence in the cause ; yet as it is a circumstance of great reliance on the part of Mr. Fox, it was thought proper to give him the advantage of relating it.)

The deposition of Mr. Oliver Farrer, who was solicitor and agent to Mr. Fox from February 1775, when Mr. Garforth was not employed, is of an enormous length, and contains a very tedious, inapplicable detail of matters wholly foreign to the subject of the cause. In those parts of the deposition which were permitted to be read, at the Hearing before the Lord Chancellor, he deposes,

That the transaction of the two annuities, granted by Mr. Fox to Mr. Dawes and Mr. Mackreth, was not communicated to him by Mr. Fox, till after it was settled, that those gentlemen were to be the trustees for the sale of the Surry estate, &c.

That although, at the time, he considered the loan of 3000*l.* from Mr. Mackreth to Mr. Fox, when the latter was in such immediate distress, to be an act of great kindness, yet he has since had reason to consider it as part

of a scheme to get the estate to be vested in Mr. Mackreth, and the beginning of a conspiracy formed between him and them against Mr. Fox's fortune.

That he recommended Lord Grantley and Lord Ligonier to be the trustees, and did not approve of Mr. Mackreth's nomination of Mr. Dawes to be his co-trustee, which he considered as another part of the scheme projected to injure Mr. Fox.

That he disapproved of the Draft of the Conveyance of Mr. Fox's Surry estate, in trust to Mr. Mackreth and Mr. Dawes.

(See Mr. Oliver Farrer's letter in the Appendix on the subject, where this part of the business is fully explained.)

That Mr. Mackreth made a promise that nothing should be done in the business of the trust, without advising with him, the said Mr. Farrer, on the subject.

That when Mr. Fox informed him of his having signed and executed various deeds and writings at Mr. Garforth's house, on the 16th of January, 1778, the information was too confused and imperfect to make it intelligible to him, that the Surry estate was agreed to be sold to Mr. Mackreth; so that he, Mr. Oliver Farrer, though he had much confidential intercourse with Mr. Fox, between the 16th of January and the 20th of February following, when Mr. Fox went to Paris, remained in ignorance of the real state of the agreement for the sale of his Surry estate, till some time after he went abroad.

That it was not till the month of February, 1781, when, by mere accident, and, in a very unexpected manner, he became acquainted with the fact, that Mr. Mackreth had sold the estate, he bought of Mr. Fox, to Mr. Page for 50,500*l*.

ON THE PART OF MR. MACKRETH,

Doctor Shepherd deposes, that he had heard Mr. Fox express him-

self to be perfectly satisfied with the sale of his Surry estate to Mr. Mackreth, and that he frequently complained of Mr. Oliver Farrer, for not supplying him with money in his various and pressing exigencies.

Thomas Page, Esq. son of the gentleman to whom Mr. Mackreth sold the Surry estate, deposes,—That in the latter end of February, or the beginning of March, 1778, he first proposed, on the part of his late father, to purchase the estate of Mr. Mackreth;—and that, on or about the 20th of the said month of March, at Mr. Mount's, on Tower-Hill, his father agreed to become the purchaser for the sum of 50,500*l.*—and that, in about five or six weeks after, an agreement in writing was executed for such purpose. He also adds, that his father lost a considerable sum of money by the sale of the said estate.

Mr. W. Bray, solicitor to the late Mr. Page, and also to his son, deposes,—That some of the estates purchased by Mr. Page of Mr. Mackreth, were sold by auction, and others by private contract; and that the parts so sold produced the sum of 18,433*l.* 5*s.* which, taken in their relative proportions, was considerably below the price, originally given by Mr. Mackreth to Mr. Fox, for the same.

Mr. B. Garforth, who acted throughout the business between Mr. Mackreth and Mr. Fox, as solicitor for the former, and oftentimes also, as solicitor for the latter, gives, in his deposition, a particular account of almost all the material transactions of the cause, which have been already related.

The cause was set down by the Plaintiffs at the Rolls, and, on the 26th, 27th, and 29th days of June, and on the 4th, 14th, and 19th days of July, 1786, it was heard before Sir Lloyd Kenyon, who had been lately appointed Master of the Rolls, when his Honour was pleased to decree,

“ That *undue advantage* had been taken by the Defendant, Robert Mackreth, of the confidence reposed in him by the Plaintiff, James Fox; and that, *therefore*, the Defendant, Robert Mackreth,

“ ought to be considered as a Trustee, as to all the estates and interest comprized in the conveyance of the 23d and 24th days of April, 1778, in the pleadings mentioned, for the said Plaintiff, James Fox, after the execution of the said deeds;—and refers to the Master to take an account of all sums of money, received by the Defendant, Robert Mackreth, or by any other persons, by his order, or for his use, from Thomas Page, in the pleadings named, or any other person or persons, for or on account of the sale of the said estates, and interest after the rate of five *per cent.* from the time of receiving the same respectively: and the said Master is also specifically ordered, to take an account of other money transactions between the parties in the said cause,” &c.

From this Decree Mr. Mackreth was advised to appeal to the Lord Chancellor;—and the cause came on to be heard before his Lordship May 12, 1787, and was heard by him on that and several other days, viz. the 10th, 12th, 13th, 24th, and 26th of November, and the 7th and 8th days of December in the same year; and after this long and patient hearing, his Lordship entered at large into the several questions that had been argued in the course of the cause.

The tendency of his Lordship's Speech seemed to be, in a great degree, favourable to Mr. Mackreth, as well as to convey an impression of the cause, on the material points of it, very different from the principles on which the Decree at the Rolls was framed. Of the two Annuities of 500*l.* and 350*l.* granted to Mr. Dawes for himself and Mr. Mackreth, his Lordship seemed to speak, as liable to no objection or censure, but such as may, in general, belong to the purchasing annuities of young men at six years purchase. The Transaction of the Loan of 3000*l.* to Mr. Fox on mortgage, he appeared to treat as *fair* and *honourable* on the part of Mr. Mackreth, *and not as a scheme* to get the legal estate out of Mr. Farrer, or as part of a conspiracy to defraud Mr. Fox, as charged in the

bill, and attempted to be proved by Mr. Farrer's evidence. Of the Annuity of 350*l.* sold by Mr. Fox to Mr. Mackreth, in June 1779, his Lordship spoke, as if he thought it premature to pronounce on that transaction, till an account should be taken before the Master.—With respect to the leading subject of the cause, the sale of Mr. James Fox's Surry estates to Mr. Mackreth, his Lordship, so far from considering the sale as impeachable for abuse of confidence, was understood, not only to say, that he did not see he had materials to affirm that fact upon, but also to make many important observations, all of which tended to controvert the Decree at the Rolls. From part of his speech, it appeared also, as if he intended to call in some of the Judges, and have the cause solemnly argued before him, in their presence. He seemed, likewise, to think it necessary that, for the purposes of Justice, there should be a further investigation into the real value of the Surry estate. At the conclusion of his speech, his Lordship expressed himself, as very apprehensive, that it might cause very great alarm, if the sale of an estate was to be cut down for excess and disproportion of value, after repeated confirmations, by transactions upon the original contract, and after an acquiescence of three years and an half.

The cause was then ordered to stand over ;—and on the 2d day of December, 1788, the Lord Chancellor was pleased to affirm the Decree of the Rolls, without entering into any reasons to explain the grounds upon which he was, at length, induced to accord with the opinion given there.

Mr. Mackreth petitioned his Lordship for a rehearing ; and, on the 22d of March, 1789, the petition came on to be heard, when his Lordship refused to grant another hearing before himself ; but deemed it most proper to leave it to Mr. Mackreth, to appeal to the House of Lords. To that tribunal, therefore, Mr. Mackreth made his final appeal, which came on to be heard at the bar of the House of Lords, in March, 1791 ; when, on the

motion of Lord Loughborough, the Decree of the Master of the Rolls was re-affirmed, with 200*l.* costs, to be paid by Mr. Mackreth; to use the noble and learned Lord's own words, for his daring presumption in troubling their Lordships with that appeal!

Such is the History of the various transactions, both private and public, which have taken place between Mr. James Fox, and Mr. Mackreth; and I have very much mistaken my own design, and the character of the gentleman which I have taken upon me to defend, if I have not given a fair, candid, and impartial recital of them:—it is for the interest of Mr. Mackreth I should do so; and I must betray the cause I mean to support, if I suffered any prejudices of friendship to interfere, in order to gloss over a business which, for its full illustration, requires no aid but that of Justice and of Truth. It was necessary thus to prepare the reader for feeling the full force of the arguments which I shall hereafter submit to his impartial examination, with the various facts upon which they are founded: I have, therefore, carefully, and as it has been my most anxious desire, faithfully produced, from the pleadings of both parties, such a plain, unvarnished detail of them, as has not the least tendency to give any improper bias in favour of the cause I have undertaken.

Having made this preliminary observation, I shall not hesitate to assert, that this important cause depended, and depended solely, on the following questions.

I.—Whether Mr. Mackreth actually became a Trustee for the sale of the Horseley Estate?

II.—Supposing he had actually acquired the character of a Trustee, whether he could not purchase the Trust Estate of his Principal?

III.—Whether Mr. Mackreth did not give a full value for the Horseley estate? And

IV.—Whether he knew, at the time of making the agreement, for the purchase of the estate from Mr. Fox, that he could sell it to Mr. Page, for the sum which that gentleman shortly after agreed to give him for it?—If, therefore, it can be proved, that he was not a Trustee,—or, if a Trustee, that, according to the law of the land, he *could purchase* of his principal;—if it can also be made to appear, that he not only gave an adequate, but an *exorbitant price* for the estate;—and that he had not any knowledge, or expectation, of Mr. Page, or any other person, being disposed to give him any advanced price, much less the extravagant one which, from motives peculiar to himself, that gentleman readily offered,—there will be an end put at once to the *alleged ground* for the accusation, upon which the Decree against Mr. Mackreth was declared to be founded;—viz. That Mr. Fox placed an *unlimited confidence* in Mr. Mackreth,—and that Mr. Mackreth abused it, with a view to his own particular advantage.

Nor do I fear to rest the defence and exculpation of Mr. Mackreth's character on the clear and decisive proof of all these various points; and, consequently, that Mr. Fox did not place any particular confidence in Mr. Mackreth, or if he did, that Mr. Mackreth did not abuse it; but, on the contrary, that he was the active, ready, and faithful friend of Mr. Fox, when he appears to have had no other friend in the world.

This might be immediately proved, as it will be done hereafter, to the satisfaction of every unprejudiced mind: but a variety of extraneous matters have been artfully, insidiously, and, I had almost said wickedly, introduced into the cause, with a view, that has but too well succeeded, in the several courts where it was heard, to create prejudices against the intentions and character of Mr. Mackreth, and to turn aside the eye of justice from the only questions, upon which it ought to have rested, for the important purpose of legal or equitable decision.

All these several transactions to which I allude, are, therefore, forced upon my examination; and though they have had an influence, which

does not naturally arise from them, in producing the Decree, so fatal to Mr. Mackreth's property and reputation, I have not the least doubt, but they will be considered, in a very different light by the public at large, to whose tribunal, as the friend of Mr. Mackreth, I make the present appeal;—not to give him back his property, for that is irretrievably forced from him;—but to regain that good name, to which the public opinion can fully restore him, and which he considers, in common with every honourable man, as the first blessing of life.

The subjects of our future consideration will, therefore, necessarily be,

I.—The situation of Mr. Fox previous to, and at the time of, his first acquaintance with Mr. Mackreth.

II.—The two Annuities granted by Mr. Fox to Mr. Dawes and Mr. Mackreth, Sept. 23, 1777.

III.—The Mortgage of 3000*l.* on the Horseley estate.

IV.—The intended Trust for the sale of that estate, &c. &c.

V.—The transaction of the 16th of January, 1778, when instead of becoming a Trustee, Mr. Mackreth became a Purchaser of the Horseley estate.

VI.—The Sale of the estate to Mr. Page.

VII.—The further Loan of 1000*l.* from Mr. Mackreth to Mr. Fox, and the liquidation of that Sum into an Annuity, in June, 1779.

VIII.—The Confirmations of the Sale of the estate to Mr. Mackreth, by Mr. Fox.

IX.—The Accounts, delivered by Mr. Mackreth to Mr. Fox.

X.—The Hearings of the Cause at the Rolls,—in the Court of Chancery,—and at the bar of the House of Lords.

MR. JAMES FOX

HAD engaged so deeply in the dissipations and extravagance of what is called high life, that, four years previous to his coming of age, he had con-

trived to involve himself in debts, for part of which several of his acquaintance and fashionable companions had engaged themselves as securities, to the amount of 26,000*l.*

At this time, his situation was of such a nature, as to awaken the attention of the friends of his family; and Mr. Oliver Farrer, who had been employed as a solicitor in some of the family concerns, proposed, that, to preserve him from the inconveniences which might hereafter arise to him, from his present engagements, the Horseley estate, amounting to about twelve hundred pounds *per annum*, being the only part of his opulent inheritance of which he had a power of disposal, should be sold as soon after he came of age as the entail could be cut off; and the money, arising from the sale, be applied in liquidating his debts in the most advantageous manner, and thereby extricating him from the difficulties in which he had so incautiously involved himself. Nothing, however, was done:—this provident plan had never ripened into execution; and at the time when he attained twenty-one years, his intervening extravagance had increased his former debts to the enormous sum of 50,000*l.*

Thus situated, and, as it were, abandoned by his friends, and Mr. Oliver Farrer, who has been ostentatiously represented by himself, and so loudly trumpeted forth by others, in the course of the cause, as the firmest of them,—this distressed and deserted young man was under the mortifying necessity of applying for relief to strangers.

In a short time after he came of age, the Rev. Doctor Shepherd, who had been his tutor, and, as it may be supposed, at the earnest solicitations of his unhappy pupil, communicated his distresses to Mr. Mackreth, and Mr. Garforth, the solicitor and friend of that gentleman; and, by the means of Mr. Garforth, Mr. Mackreth was first introduced to Mr. Fox, who repeated the distresses of his situation, and requested the loan of 5000*l.* in order to relieve them. This circumstance introduces

THE TRANSACTION OF THE TWO ANNUITIES GRANTED TO MR.
DAWES, AND MR. MACKRETH, SEPTEMBER 23, 1777.

It has been a principal, and as I have before observed, a too successful object in the artful arrangement and conduct of this cause, to give it those annuity features, which, from the frequent iniquity of annuity concerns, were aptly calculated to awaken unfavourable prepossessions concerning it, and, more or less, to influence its final decision. But to proceed—

In answer to the requisition of Mr. Fox, for the loan of 5000*l.* Mr. Mackreth proposed to make an immediate advancement of the money, on a mortgage security, at five *per cent.* To this proposition Mr. Fox answered, that it was not in his present power to give such a security, having a life interest only in any of his estates but that of Horseley, in Surry, of which he could not suffer a recovery till Michaelmas term, and that, therefore, he had no other means of arranging the business but in the way of granting an Annuity. In consequence of this information, Mr. Mackreth applied to Mr. Dawes, an eminent Exchange Broker, who agreed to execute the business with him in different shares; and accordingly two Annuities, one of 500*l.* and the other of 350*l.* were granted by Mr. Fox to Mr. Mackreth and Mr. Dawes, for the sum of 5100*l.*

The several objections which have been made to this transaction are,

I.—That Mr. Mackreth was bound, as a man of character, to have assisted Mr. Fox in some other way. He might, it was said, have summoned a meeting of Mr. Fox's creditors, and, as a recovery of his Surry Estate would shortly be suffered, which would enable him to satisfy their demands, have recommended them to patience and forbearance.

To this I *answer*,—That Mr. Mackreth was a stranger to Mr. Fox; and that he had nothing to do but to lend him the money, or not,—to afford him relief in the only way he could do it, with safety to himself,—or to leave the thoughtless young man to the approaching consequences of his

distressed situation. If he had taken the method, which has been suggested, of interposing so materially in the affairs of Mr. Fox, it would, I am sure, have been confidently imputed to him, with more appearance of reason than similar imputations have been applied to other parts of his conduct, that he intruded himself into the concerns of Mr. Fox, with some secret and insidious view of interest and advantage to himself. It was Mr. Farrer's office, who was the family solicitor, and who had originally proposed such a plan, to have adopted it; and thereby have preserved Mr. Fox from the painful necessity of applying to strangers for that assistance which he could not obtain from his friends. If Mr. Farrer had been as active and zealous in this part of his duty towards Mr. Fox, as it became him to be, this long, expensive, and harassing litigation would not have disgraced the Justice of our country. As for the idea of lending the money on mortgage, I am disposed to believe that it would have operated against Mr. Mackreth, in favour of prior judgment creditors. It is also a question of a very dubious nature, whether he could have obtained an insurance on Mr. Fox's life, without an exception to his going abroad? and, to vary his pleasures, or as an asylum from the menaces of his creditors, the young gentleman had long been in the habit of making frequent visits to the Continent. But even supposing that an insurance could have been obtained; when the *percentage* of the insurance is added to the interest of the mortgage, Mr. Fox would have been no great gainer by the proposed change in the proceeding. At all events, Mr. Mackreth cannot be justly blamed for obtaining the best possible security for his money. It is very true, if the recovery had been suffered, or if Mr. Fox had died before the end of Michaelmas term, that all would have been well; but if, on the contrary, he had, in the arms of some foreign beauty, forgotten to suffer the recovery in Michaelmas term, and had died before another was commenced, the boasted security would have been buried in his grave, and the money lost for ever.

As to the number of securities taken by Mr. Mackreth of Mr. Fox, on which great stress has been laid, viz. A grant of the Annuities,—Bond and Warrant of Attorney to enter up Judgment,—and a Demise of his Yorkshire estates,—it may be briefly observed, that they are no more than are very usual on similar occasions,—that they are such as every Lawyer would advise, and every prudent man would require. There can be no good reason assigned why Mr. Mackreth should not add to the securities for his annuities, a priority of payment to the other creditors. By such an arrangement Mr. Fox could receive no injury,—the annuities could be paid but once.

Second Objection.—The consideration of six years purchase was represented as a very unfair price; as very much beneath, nay, as not more than half the real value.

Answer.—As to the real value of Annuities, the calculators on that subject have by no means agreed: general practice is the best criterion, and six years purchase, for the life of the Grantor, is not only the common price in the market, but has been acknowledged, to be an adequate consideration, in Courts of Justice. There was no good reason, that I can discover, why Mr. Mackreth should exceed the market price; and if he had done it, I have no doubt but the circumstance would have been tortured, as every other act of his kindness to Mr. Fox has been, into an artful and base design on that young man's property and fortune.

But, after all, this annuity transaction was not in itself of sufficient consequence to justify such a minute investigation of it; for Mr. Mackreth was always ready to suffer the annuities to be redeemed; and they were, in fact, terminated, by an act of his own, in four months after he had purchased them. The truth is, that it was introduced into the cause, as an artifice to mislead the judgment upon the true and only object of it.

To prove, however, that the purchase of these annuities was a circumstance forced upon Mr. Mackreth, by the necessities of Mr. Fox, and

that he was still ready, as he before had been, to accommodate Mr. Fox on mortgage at five *per cent.* when he had the means of securing a loan in that manner; we find that, in about three months after the former transaction, he advanced a very considerable sum to Mr. Fox on those conditions: and this leads us to

THE MORTGAGE OF 3000*l.* ON THE HORSELEY ESTATE.

Mr. Fox, it seems, having drawn bills at Paris to a considerable amount, and the Holders of them having, in the month of December, 1777, brought matters to such an extremity, that his doors were continually watched by the Myrmidons of the Law, and he himself locked up in his lodgings in Clarges Street, from the apprehension of being arrested,—He applied to Mr. Mackreth, for it does not appear that there was any other person in the world, to whom this abandoned young man could apply, with any expectation of relief, to lend him *two thousand*, which was afterwards extended to *three thousand*, pounds.—This sum was not only advanced at a very short notice, but, in order to suit the business to the fretful impatience and mortifying anxieties of the moment, the mortgage was hastily concluded, on the mere *verbal* Assurance of Mr. Farrer, as to the validity of the title.

At this time, the conduct of Mr. Mackreth, on the pressing occasion, was acknowledged both by Mr. Fox and Mr. Farrer, as an act of great kindness and real friendship:—But when it became an object of crafty policy to throw a false colouring over every part of Mr. Mackreth's concerns with Mr. Fox, this very act of humanity, for it well deserves that name, was to suffer the grossest perversion; and the accidental circumstance of Mr. Mackreth having taken a mortgage of the fee-simple of the estate, and not a mortgage for a term of years,—in consequence of which proceeding, the fee of the estate, which had been vested in Mr. Farrer, on suffering the recovery of it, was transferred to Mr. Mackreth, has

been very artfully coupled with the purchase of the annuities, as part of a secret plan to get possession of the estate.

To this idle, groundless, and most ungracious Charge, it may be at once answered,—that a term of years would be as good as, but not a more proper security than, a mortgage of the fee, nor more common. Besides, it was so prepared by counsel, and not a word of objection offered to it.—Mr. Farrer himself not only approved, but was a party to the deed; the interest of the fee, as has been just observed, having been vested in him, at the time of suffering the Recovery.

It has also been argued, as a reprehensible omission on the part of Mr. Mackreth, that he did not take this opportunity of converting the two annuities into a loan.

To this Objection, it may be obviously answered,—that such an arrangement does not appear to have been thought of at the time, or suggested even by the vigilant spirit of Mr. Farrer: besides, this was a transaction of great hurry and anxiety; and though Mr. Mackreth, from the pressing necessity of the business, went so far as to lend 3000*l.* upon a mortgage, without examining the title, it would have been an act of very great imprudence in him to have converted the annuities into a loan, in the same manner.—There was no time to examine the title; and it was then intended to dispose, very shortly, of the Surry estate, when these annuities would, of course, be redeemed.

—The intended Trust, for the sale of the Surry estate, to pay debts, is the next transaction which offers itself to our consideration.

And here it is material, previously, to repeat the Observation, already repeated, that this business, which was of so much importance to Mr. Fox, had been neglected in a manner which the Friends of that gentleman would find it difficult to justify. He came of age in August, 1777,—in the November following, he suffered a recovery of the only estate in which he had more than a life interest, in possession, and no advance whatever

had been made to form and effectuate the trust, which had been projected by Mr. Farrer some years before.—It does not, indeed, appear to have been thought of in earnest till the 24th of December, and subsequent to the execution of the mortgage.

The Lords Grantley and Ligonier had indeed been nominally proposed to be Trustees, and Mr. Farrer was to have been joined with them. That plan, however, seems to have gone no farther than the bare proposition of it,—and Mr. Farrer refused to engage in any vulgar trust. At this time, however, Mr. Fox began to consult Mr. Farrer about nominating Trustees, and proposed Mr. Mackreth for that office. This proposal was approved by Mr. Farrer, who observed, on the occasion, that Mr. Mackreth was well qualified for such a concern, both as a man of property, and a man of business:—Mr. Mackreth, therefore, on the proposition of Mr. Fox, consented to engage in the Trust, and recommended Mr. Dawes to be his Co-trustee, as a person who, from his situation in life, as an Exchange Broker of very extensive concerns, would greatly assist him in bringing the proposed business to a speedy and advantageous conclusion.

At this period Mr. Farrer appears to have entertained a very high opinion of Mr. Mackreth's humane and friendly disposition:—but, having been informed, by Mr. Fox, very soon after this last transaction, of the two annuities, of which, he says, he had never before heard, he was, in the language of his deposition, extremely shocked at the communication,—immediately conceived a very unfavourable opinion of Mr. Mackreth, and, from that moment, determined, in his own mind, that all Mr. Mackreth's declarations, and acts of friendship, were replete with artifice, and intended to cover a design, he now first suspected in him, to get possession of the Horseley estate, with a mercenary view to some projected advantage.

I am very well disposed to consider Mr. Oliver Farrer as a man of a most amiable and well-directed sensibility;—but, in this particular instance, it seems to have been awakened into alarm without any apparent reason;

—at least my sagacity, such as it is, cannot discover any thing so very shocking in Mr. Mackreth's advancing Mr. Fox money to pay his debts, and extricate himself from his immediate embarrassments, in the only way he could do it, with a prudent attention to his own security. It rather appears to me, if Mr. Farrer had not grossly deceived himself, that, instead of being shocked at the conduct of Mr. Mackreth, he would have hung down his head with shame and confusion, at the recollection of having left Mr. Fox to seek that assistance from Strangers, which he had a right to expect from the natural anxiety of his Friends,—and the forward, interposing activity of his Solicitor.

But whether Mr. Farrer was right, or wrong, in his conjectures concerning the secret plots his amiable apprehensions had imputed to Mr. Mackreth, against the fortune of Mr. Fox, it became him, surely, to act in conformity to them.—He might have been wrong,—but he ought to have been consistent. If he had, in reality, conceived this bad opinion of Mr. Mackreth, he should have remonstrated with Mr. Fox on the impolicy, the danger, and the dishonour of suffering such a man to be a Trustee; and, if he could not have prevailed on him to listen to his counsel, he should have withdrawn himself from all concern in the business. It would also have been his duty, under the impulse of such apprehensions, to have expressed, in a manly manner, to Mr. Mackreth, the opinion he entertained of his conduct. Instead, however, of doing this, or any thing like it, Mr. Farrer confines all his shocking impressions to the sanctuary of his own bosom; sets, at once, about acting in the most cordial manner with Mr. Mackreth,—gives him a list of Mr. Fox's debts,—sends him a rental of the estate,—examines the deed of trust, proposes alterations in it, and confers with Mr. Mackreth's Counsel and Solicitor on the occasion. He did not, indeed, as he loudly complains, see the deeds after they were engrossed; but the Trust did not take place, and, if it had, it does not appear that any reasonable objection could have been made to

them. In short, it may be fairly inferred, from the conduct of Mr. Farrer in this last transaction, that his alarms were soon forgotten; and that he has recollected them only, when they were found necessary to mix up with the vilifying ingredients prepared to poison the reputation of Mr. Mackreth, in this extraordinary cause.

We now draw near to that Event which is the *only material circumstance* of this dilatory, painful, and expensive Contest,—*the purchase* of Mr. Fox's Surry estate by Mr. Mackreth; and on this point I could have wished to rest the merits of it: but as other matters have been introduced, by the advisers of Mr. Fox, to aid the purposed crimination of Mr. Mackreth, it is my duty to examine them as they intrude themselves on my attention, that there may be no appearance of shrinking, in any one article of the cause, from his justification.

The history of the transaction of the 16th of January, 1778, when the plan of making Mr. Mackreth a Trustee for the sale of the Horseley estate, was lost in his becoming a Purchaser of it, has been already so fully related, and will, hereafter, in all its various parts, be so minutely considered, that I shall pass, at once, from the circumstances which produced the sale of the estate, to a detail of every subsequent transaction connected with it.

The first contract for the sale of this estate to Mr. Mackreth, was signed by Mr. Fox, on the 16th of January, 1778. Full articles of agreement were then settled by counsel; and, on the 28th of the same month, that is, twelve days after the first contract, Mr. Fox executed them, not only without the least complaint, but with so much recollection of himself, that, on reading them, he explained the amount of his Mother's Annuity to be 300*l.* instead of 240*l.* which had been the former statement of it, and, with his own hand, inserted that Sum in the Articles.

In a short time after this transaction, Mr. Fox went to Paris; but, in the interval between his signing the first contract of sale, and of his quitting the kingdom, he is acknowledged to have frequently seen and consulted Mr. Oliver Farrer, who has since manifested such a decided disapprobation of the sale. Nevertheless, when Mr. Fox is at Paris, he writes with great anxiety to Mr. Garforth, to hasten the completion of the contract. He writes also to Mr. Farrer on the same subject, who, in consequence of his Parisian communications, at one time explains that he is to see the conveyances previous to their engrossment; at another, actually delivers the title deeds to Mr. Garforth, for Mr. Mackreth; and, at length, writes a letter, wherein he acknowledges that he had received directions from Mr. Fox, to see the contract of sale carried into execution.

About the 17th of April in the same year, which was three months after the first contract of sale was signed, Mr. Fox returned to England, and when it was explained to him, that, after the conveyances had been prepared by Mr. Garforth, and approved by Mr. Burton, the Counsel, Mr. Farrer had made some objections to the assignment of the purchase money; he treated the objections as of a very trivial nature, and expressed his wish that the business should be immediately completed.

On the 25th of the same month of April, 1778, Mr. Fox executes the conveyance of the Surry estate, to Mr. Mackreth, as the purchaser. In about a week Mr. Fox waits upon his mother, and obtains her execution of the same conveyances; and, which is of singular confirmation in this business, in the interval, between the day on which he executed the deeds, and that on which his mother executed them, it appears that Mr. Fox saw Mr. Farrer, and conversed with him on the subject of the conveyances to Mr. Mackreth.

In the month of October following, being three-quarters of a year after the first contract of sale, Mr. Fox executed a Letter of Attorney, autho-

rizing a surrender, in his name, of a part of the estate which proved to be copyhold; and the surrender, thus authorized by him, was to be made neither to Mr. Mackreth who had purchased the estate of Mr. Fox, nor to Mr. Page who purchased the estate of Mr. Mackreth, but to one who had purchased this small portion of Mr. Page; so that, at the time of signing the Letter of Attorney for this Surrender, a part of the estate appears to have been sold twice since the sale to Mr. Mackreth. Again, —in December, 1779, which was almost two years after the first contract of sale, and more than eighteen months after the actual conveyance of the estate, Mr. Fox *once more confirms* the sale to Mr. Mackreth, in a manner equally striking and important. It is as follows:—

When Mr. Page contracted to purchase the Horseley estate, at the very great price of 50,500*l.* the payment of the sum was agreed to be made by instalments; but though the periods, originally stipulated for the payment of this sum, were so much exceeded, that a large part of it remained unpaid at the institution of the suit against Mr. Mackreth, yet Mr. Page was not able to effectuate the payments which he actually did make, without selling some parts of the estate, and mortgaging others: and, in order to accommodate one of his Mortgagees, he requested Mr. Mackreth to obtain duplicates of certain deeds from Mr. Fox, his Mother, and Mr. Farrer. Accordingly, upon Mr. Mackreth's application to Mr. Fox, he not only executes the duplicates himself, but attends his Mother, and requests her to do the same. Mr. Farrer, indeed, refused to comply with a similar requisition from Mr. Fox, but upon terms which were disapproved, because they would have defeated Mr. Page's purpose; and his conduct, on that occasion, was remarked upon, by Mr. Fox, in terms of the severest disapprobation.

In short, to this Series of *deliberate acts of confirmation*, may be added, the calm, satisfied, and approving Acquiescence of Mr. Fox, in the Sale of his Estate to Mr. Mackreth, till a very short time before the Suit in

Chancery was instituted against him;—that is, for so long a period as three years and an half. It may not only be difficult to imagine more frequent, more active, and more solemn Confirmations of a Contract, or more uniform acquiescence in it, during the time such acquiescence lasted, than is apparent in the case before us: nor do I think it possible to state one example of a similar attempt to undo a Contract, entered into by a person of competent understanding, so strongly confirmed, and supported by so long a duration of satisfied acquiescence in it.

Indeed, if after a succession of confirmations for three years and an half, a contract made by a person so described is not safe;—when is it that men, in their bargains and dealings with each other, are to expect quiet and security. In a commercial country like our own, such a principle is pregnant with the most fatal consequences. But thus merely to state the confirmations and acquiescence as lasting *for three years and a half*, is not doing adequate justice to the argument against Mr. Fox;—for his own Bill implies, in the strongest manner, that if he had never known the fact of Mr. Mackreth's sale of the estate for the advanced price at which he sold it to Mr. Page, the Acquiescence of Mr. Fox would have been eternal.

Mr. Farrer, indeed, has declared in his depositions, that, by a mere accident alone, at the end of three years and upwards, after the sale of the estate to Mr. Page, he first became acquainted with the extravagant price, that had been given for it. It is not for me, I am sure, to doubt what Mr. Farrer has sworn;—but that an estate, within twenty-five miles of London, in a country richly inhabited, should be thus sold and re-sold, and that the price of the purchase, which bore hard on Mr. Page's fortune, was complained of by his family, and was familiar to all the neighbourhood, should not have been known by the original possessor, or any of his friends, either from curious inquiry or busy communication, during so long a period as three years and upwards,—such an extraordinary

circumstance, must be added to the chapter of those singular events, where probability yields, with reluctance, to improbable truth.

From this fair, impartial, and minute review of the Sale of the Horseley Estate to Mr. Mackreth, it is not possible for any candid or discerning man, to fix the slightest stain on the transactions of it. That nothing, however, may be omitted to do Justice to Mr. Mackreth, by proving the Injustice he has suffered,—I shall proceed to answer, singly and in order, all the objections which were urged by the advocates of Mr. Fox, and, in some instances, with an unbecoming, unwarrantable, and irregular degree of acrimony, against Mr. Mackreth,—with a sure and certain confidence of confuting them.

Objection I.—Mr. Mackreth was a Trustee for the sale of Mr. Fox's Surry estate.

Answer.—Mr. Mackreth was, indeed, intended to be a Trustee;—but the Trust did not take place; it was sunk, to use the Chancellor's expression, in the Purchase. Mr. Fox, it is true, executed the trust conveyance; but before it was witnessed or taken off the table, he renewed the proposal he had previously made to Mr. Mackreth, to purchase the estate; and a long succeeding conversation ended in the acceptance of it by Mr. Mackreth; when all idea of the character of a Trustee was done away by his becoming a Purchaser. But even, supposing, for the sake of argument, that he actually was a Trustee, he did not, by accepting the trust, disqualify himself from becoming a Purchaser. If the *cestuique trust*, that is, the person who conveys the trust, chooses to contract with his trustee for the sale of the trust estates, and is competent in every other respect, and no undue advantage is taken by the trustee of his situation, as such, the contract is as legally complete, as if it were made between two persons, who had never seen each other till the contracting moment. It bears no resemblance to the case of a trustee selling to, or in trust for, himself.

—There is not a Lawyer in Westminster Hall, who will be hardy enough to deny the legal truth of this doctrine.

Objection II.—Mr. Fox agreed to sell his Surry Estate to Mr. Mackreth, without the advice and assistance of Mr. Oliver Farrer, who was the Solicitor recommended to him by his friends, and who had been consulted by him, and employed in his affairs.

Answer.—Mr. Oliver Farrer was most certainly the Solicitor of Mr. Fox; but the latter gentleman had also employed another person in that capacity. He was perfectly capable of judging for himself, and, in this instance, he chose, as he had an undoubted right, to exercise that privilege. If the bargain was a fair one in itself, the not consulting Mr. Farrer forms no just ground whatever for impeaching it:—besides, though Mr. Farrer was not consulted at the time of making the agreement, it was nevertheless communicated to him afterwards, and he consented, according to the directions of Mr. Fox, to inspect the conveyances which were to complete it. He did, indeed, write a letter (see the Appendix) to Mr. Mackreth, in which he makes no objections but to the *form* of the assignment of the purchase money.—And here it should be observed, that though he was very particular in the statement of those objections, and did not fail to remark, that the treaty and agreement for the sale was made without his concurrence, he did not disapprove either of the price to be given for the estate, or even hint at the contract of sale being an unfair transaction, which ought not to be carried into execution.—On the contrary, his letter declares that he considered the agreement as binding on Mr. Fox, and expressed a readiness to see it completed, on the part of that gentleman. It would, surely, be the highest degree of absurdity to suppose that Mr. Farrer would have thus written and acted, if he had conceived that Mr. Fox had been imposed upon in the sale, either in point of price, or from any undue influence exercised over, or any improper advantage taken of him.

As for the promise of Mr. Mackreth, stated by Mr. Fox in his bill,—that nothing should be done in the business of the trust without consulting Mr. Farrer, it is positively denied by Mr. Mackreth in his answer: but even if the words, imputed to Mr. Mackreth, had actually escaped him, no consequences of any importance could be deduced from them; both because they refer to a trust, which was afterwards abandoned on the proposition of Mr. Fox, and because it was the pleasure of Mr. Fox, to act in the sale of his estate, without making any application to the advice or assistance of Mr. Farrer. It would, indeed, not only be very strange, but perfectly ridiculous, to interpret the supposed declaration of Mr. Mackreth as conveying an engagement, that he would not act in the concerns of the Horseley Estate without the assistance of Mr. Farrer, though he should have been excluded from the confidence, which was by no means an improbable circumstance, by Mr. Fox himself.

Objection III.—Mr. Fox was young, extravagant, and in distress; and in order to obtain supplies of money to gratify his ardent spirit of dissipation, would enter into any contract, however proposed, or however injurious to his interests.

Answer.—Mr. Fox had attained the age of twenty-one before he was known to Mr. Mackreth, and did not engage in the contract for the sale of the Surry Estate, till six months after that period. It is not even stated in the Bill, in which so many falsehoods are asserted, that Mr. Fox was deficient in understanding; nor can it be denied that he had prepared himself for the treaty he himself opened, by the fullest information, as to the value of the estate. His distressed situation can be no objection to the bargain, if it were fair in every other respect; for if this were legal doctrine, it must necessarily follow, that a man once involved in his circumstances, must be ruined for ever. He could not then sell any part of his property in order to enjoy the remainder in comfort, for no one could be found to deal with him; besides, from the nature of the contract be-

tween the parties, there was no prospect whatever that Mr. Fox would obtain a supply of money from it, to gratify any soliciting novelty of pleasure; for, by the terms of the sale to Mr. Mackreth, he was to have the whole estate free from all incumbrances; and the judgment, and other debts of Mr. Fox, which were a charge upon his real estates, were too numerous, as well as too large, to justify any hope of his being entitled to receive personally any considerable portion of the purchase money.

In fact, the sale to Mr. Mackreth was not a plan formed by him to seduce the confidence of Mr. Fox, by holding out fresh supplies for the indulgence of his future dissipations, but an actual execution of the very project which had been *originally proposed by his own friends*, and long before he was known to Mr. Mackreth, for paying his debts already contracted.

Objection IV.—The price at which Mr. Mackreth bought the estate of Mr. Fox, was by no means equivalent to the real value of it.

Answer.—Upon this question, and this question alone, depended the whole of the subject in dispute. It is the hinge upon which the cause may be said to turn:—and I must again repeat, that the other transactions brought forward to make an influencing part of it, would have been passed over by me, as matters unconnected with the real object of decision, if the design with which they were introduced,—to sully the honour of Mr. Mackreth's character,—had not made it necessary for me, to enter into a minute consideration of them,—in order to maintain it. But to proceed.

The purchase of the Horseley Estate of Mr. Fox, by Mr. Mackreth, does not, either in the circumstances, or the mode of contracting for it, wear any thing like the appearance of a dishonourable transaction. Mr. Fox was himself the proposer of it; and, while Mr. Mackreth met Mr. Fox at Mr. Garforth's house, with no other view or expectation but to become a Trustee, Mr. Fox certainly entertained the previous design of inducing him to become a Purchaser; for he brought a Valuation of the

Estate in his pocket, made by his own surveyor, which Mr. Mackreth had never seen.

The advocates of Mr. Fox, in order to serve their purposes, have represented him to be distressed as a Beggar, and ignorant as a Child; but with respect to capacity at least, the fact was far otherwise;—he was fully competent in knowledge and understanding to engage in a contract. Extravagance and dissipation are very often united to, and, not unfrequently, the effect of, superior talents; and such an union has very frequently been visible in the first political characters; nay, to be profuse, and to manifest great sagacity in obtaining the means to gratify the spirit of profusion, is a common Item in the Diary of Dissipation. Indeed, there is more than sufficient evidence, in the proceedings of this cause, to prove that, with all his love of pleasure, with all his habitual disinclination to business, he was perfectly capable, when it was necessary to promote the success of his wishes, to give it not only a serious, but very acute attention. On this occasion, he evidently appears to have acted in every respect like a man who well knew what he was about:—he clearly perceived the advantage which would be derived to him, from turning the *proposed Trust* at once into a *Purchase*, and he acted with no common perseverance under that impression. For it certainly is not discoverable that, in the progress of this treaty between them, any arts were practised, or any undue temptations preferred, by Mr. Mackreth, to captivate the confidence of Mr. Fox, and thereby seduce him into the contract. Mr. Mackreth did nothing more than argue against the apparent excess of the valuation made by Jackman, the surveyor of Mr. Fox; and his opinion, without anticipating any future proofs, is fully justified by a plain statement of that valuation.

According to this survey which, it must be observed, was made *with a view to a sale*, the gross rental of the estate was little more than 1300*l.* even including the extraordinary charge of 200*l.* *per ann.* for an old

family mansion-house,—50*l.* *per ann.* for a mill,—about the same annual sum, in small houses and cottages,—80*l.* a year for the casual but over-rated profits of the manor, and the supposed possible advancement of 72*l.* 15*s.* in the rents of the estate: exclusive, therefore, of the houses, mill, cottages, and the supposed possible advancement of the rents, which, by the bye, have proved impracticable to the *successive purchasers*, the estate was rather under 1000*l.* *per ann.* and its timber valued only at 3800*l.* If, therefore, the mansion-house, and other houses and cottages, with the mill, are valued at *sixteen years purchase*, which, for such property, cannot be considered as a depreciating estimate, the price for which Mr. Mackreth contracted was, besides paying for the timber, thirty-one years purchase for the remaining part of the estate, according to the gross improved rental of the seller's own surveyor. And even, though the whole estate should be valued without distinction of the houses, cottages, and mill, the price, agreed to be given by Mr. Mackreth, was at the rate of twenty-seven years purchase, besides paying for all the timber. It is also material to observe that, on account of the war with America, the public funds were in a declining state; that, at this time, the Three per Cents. were not above *seventy-two*; and that, within a year after, they were sunk so low as *sixty*. From these considerations, it must appear to the conviction of every impartial man, that the price given by Mr. Mackreth was not only very high, but really an act of imprudence in one who bought, even without a professed view to sell again, and much less to sell to the ideal advantage of two or three thousand pounds.

Objection V.—The Estate, subject to Mrs. Fox's jointure of 240*l.* a year, and without the furniture of the mansion house, had been valued by Mr. Jackman, the surveyor of Mr. Fox, at 45,000*l.*: but that Mr. Mackreth bought the estate for 39,500*l.* with an exoneration from the jointure, except in the event of Mr. Fox dying before his mother, and with the furniture of the house into the bargain.

Answer.—The valuation of Mr. Jackman, the surveyor, is, at the very first view of it, exorbitant and excessive. The yearly rents of Cobham manor were valued at 80*l.* per annum (though it was proved in the cause between Mr. Page and Mr. Mackreth, to have been no more than 67*l.* for an average of twenty years), and *forty years purchase*. The rest of the estate, including near 300*l.* per annum in buildings, a mill, and a supposed advancement of 72*l.* 15*s.* (which, however, the successive purchasers have never been able, in the smallest degree, to obtain), was valued by him at thirty-two years purchase; to which is added, the value of all the timber on the estate. Nor was this the whole of the excess,—for, in order to make out the 300*l.* in buildings, the rental charged the old family mansion house, in which Mr. Fox resided, with its gardens, &c. at the very high rent of 200*l.* per annum. Thus he first charged an *exorbitant rent* for the mansion house, and then, by way of mounting excess upon excess, valued this *imaginary house rental at thirty-two years purchase*.—It would, surely, in the opinion of every experienced person, have been a far more just, though by no means a depreciating valuation, if the mansion house had been estimated at 100*l.* per annum, and sixteen years purchase, which, at once, makes a reasonable curtailment of 4800*l.* in the single article of the mansion house; and reduces the price, given by Mr. Mackreth, to what was very little short of the value set upon the estate by the chosen surveyor of Mr. Fox, valuing for a sale. And, to proceed, if 13*l.* is deducted from the annual income of the manor of 80*l.* as valued by Jackman, and which has been proved, in another cause, to have produced, on an average of twenty years, but 67*l.* per annum,—according to the valuation of forty years purchase, 520*l.* more must be taken from the aggregate valuation.—If the rental of the mill and cottages be brought down from the extraordinary estimate of thirty-two to sixteen years purchase, another similar deduction of 1520*l.* must be made;—and if to these several sums be added a drawback of the supposed advance of 72*l.* 15*s.* on the rental of the estate (which subse-

quent experience has proved to be impracticable), valued also at thirty-two years purchase, and making the sum of 2346*l.*—the total of these four sums will be as follows.

	£.	s.	d.
Deduction from the value of the mansion-house	4800	0	0
Ditto from the mill, and cottages - - -	1520	0	0
Ditto from the manor - - -	520	0	0
Ditto from the supposed advancement of the rental	2328	0	0
Total -	9168	0	0

Which sum being deducted from the valuation of
Mr. Jackman, viz. - -

45000 0 0
- 9168 0 0

Produces a remainder -

35832 0 0

Which sum, being deducted from the price paid for
the estate, viz. - - -

39500 0 0
35832 0 0

3668 0 0

plainly proves, on the fairest and most liberal principles of valuation, and correcting Mr. Jackman's estimate only in the foregoing articles, that Mr. Mackreth gave 3668*l.* more for the Estate than it was worth: all of which, and much more, would have been proved, if the Cause had been sent to its natural and obvious decision in a Court of Law.

The following considerations are also offered in aid of those which have preceded them.

Mr. Jackman actually made his valuation at the beginning of the year 1777; a circumstance which leads to this important observation,—that, the difference of the price of stocks being considered, the price given by Mr. Mackreth, can scarcely be said to fall short even of Jackman's excessive estimate. This will appear from the following Statement.

In the first month of the year 1777, the *three per cents.* were at 80, and, in the three following months they fell to 78. But in January, 1778, when Mr. Mackreth made the purchase in question, the *three per cents.* were no higher than 72; and, within three months had sunk to 61.—If then the price of stocks at the end of three months, from the time of Jackman's valuation, and at the conclusion of the same period from the time of Mr. Mackreth's agreement to purchase, that is, at the time he actually concluded the purchase, are taken in a comparative view, which cannot be considered as an unfair proposition, the stocks will appear to have been seventeen *per cent.* lower when Mr. Mackreth purchased, than when Mr. Jackman valued the estate: and, according to this statement, if the price of land is weighed in the same scale, which is a regular mode of adjusting the business, the price Mr. Mackreth gave for the estate actually exceeded even Mr. Jackman's excessive valuation of it. But even, if the price of stocks is taken at the precise periods when Jackman valued, and Mr. Mackreth contracted to purchase the estate, they were eight *per cent.* lower at the latter period, and, consequently, according to the same mode of reasoning from the funds to land, the price which Mr. Mackreth paid for the estate, will not fall short above a fifteenth part of the valuation which the surveyor of Mr. Fox made for a sale.

But if we take the purchase in a view the most unfavourable to Mr. Mackreth, by discarding all reference to the great excess of Jackman's valuation, or the rapid depression of the funds, between the period of that valuation, and the purchase by Mr. Mackreth;—the latter, professing to buy on a speculation of profit, gave a price which was only one-seventh

less than the estimate of the seller's own surveyor, valuing with an express view to a sale, and, consequently, cautious in the extreme, as we have already proved, not to commit the error of an under-value.

Objection VI.—Mr. Mackreth, two months after he had bought the Estate of Mr. Fox, sold it to the late Thomas Page, Esquire;—by which sale he gained 11,000*l*.

Answer.—This great and unexpected advantage, obtained by Mr. Mackreth, was the irresistible temptation that brought on the suit against him. If, however, Mr. Fox received the value of the estate at the time he sold it, he cannot be injured, let the gain upon the subsequent sale be what it may. It would be a strange and injurious principle indeed to establish, that, because a purchaser is so fortunate as to sell shortly, or even immediately, after he had bought, to a great advantage, his purchase, therefore, should be set aside, as unfair, to the loss both of his profit and his reputation. Such a principle would bring the whole concerns of a commercial country into jeopardy.—If, indeed, Mr. Mackreth had known at the time of his purchase, that he could sell the estate at a much greater price than he offered for it, such a circumstance would, as it ought to have been, material against him; because, having previously consented to become a Trustee, it would have had an unfavourable aspect, and excited very justifiable doubts of his integrity, if he had concealed such an important circumstance from his intended Principal.

But the imputation to this effect, so strenuously insisted upon in Mr. Fox's Bill, and which appears, as far as I can discover, to have been the leading, if not the sole equity in the cause, whereon his advocates at first rested all their hopes of a favourable decree;—this imputation, I say, so far from being supported by facts, has not even the support of a reasonable conjecture.—Mr. Mackreth positively swears, in his answer, that at the time he contracted to purchase, he neither was in treaty with, or knew any person who would buy the estate: and his answer, in this very essential point,

not only remains uncontradicted, but is fully and directly confirmed by Mr. Thomas Page, the son of the gentleman to whom Mr. Mackreth sold the estate; who positively proves that his late father did not begin to treat with Mr. Mackreth, till near two months after the latter had contracted to buy it. Besides, that a person should be found, nay, should offer himself, who, either from local partiality, the vanity of particular possession, the pique of being restrained and circumvented in his rural amusements, or any other cause, which has the power to blind the judgment, and stimulate men to indiscretion, should buy the estate, with all its deficiencies, at forty years purchase, was a chance that no discreet man would look to, with any reasonable hope. On the contrary, the expectation of an heavy loss from the purchase, in consequence of the then lowering aspect of public affairs, from the war with America, would have dwelt upon the apprehension of any man, who thought less of doing kindness, and more of immediate gain, than Mr. Mackreth. Indeed, the late Mr. Page, and his family, very soon experienced the folly and rashness of the purchase, by the heavy loss that shortly followed to the amount of 23,000*l*.

And here it may be proper to mention, that, in consequence of this loss, Mr. Page, the son, Devisee and Executor of the late Thomas Page, Esquire, filed a bill against Mr. Mackreth, to be repaid such sums as should appear to exceed the value of the estate purchased of him, by his late father. Nor can the impropriety of the bill filed by Mr. Fox against Mr. Mackreth appear in a stronger light, than by supposing the *two bills* to have proceeded to an hearing, and to have come on together. It is really a matter of very curious consideration, as to what the Court would have done on the occasion. Relief could not have been given in both, and how the Court could have acted in such a singular crisis; whether it would have weighed which was wise, and which was foolish, or which was more so than the other, can only form a subject for ingenious speculation. I am of opinion that *both bills* must have been dismissed. - Mr. Page de-

serted his bill in that respect; but such a circumstance gives no advantage to the cause of Mr. Fox, which must be considered precisely in the same circumstances, as if Mr. Page had continued to persist in his demand.

It must, however, be acknowledged, that the extent of the loss sustained by the Page family, is not sufficiently proved in the cause. Mr. Page, the son, who cannot be thought a very willing witness, and, as has just been related, had filed a bill against Mr. Mackreth, for selling his father the estate too dear, just before the suit was instituted by Mr. Fox against Mr. Mackreth for buying it too cheap: this Mr. Page swears, however, in general terms, that his Father sustained a very considerable loss by the purchase of the Horseley Estate.

Mr. Bray, who was the solicitor of Mr. Page, also proves that the subsequent sale of several parts of the estate was at a much lower price than Mr. Page paid for it: but, from the imperfect manner of taking depositions in Chancery, he was not brought to declare the whole of the loss, with which he was so minutely acquainted.

This was one, among many other reasons, in this cause, why the only real question in it, whether Mr. Mackreth gave the full value of the estate or not, should have been sent to an Issue, and been determined by a Jury. And as such a plain and usual mode of proceeding in similar cases, would, at once, have decided the matter in litigation, I cannot possibly conceive the motives which operated on the minds of the Judges, who successively heard the cause, to resist what appears to me to be, such a reasonable, just, and necessary proposition. But to proceed—

Much stress has been laid, in the pleadings of the cause, upon the circumstance that such an inconsiderable sum as 500*l.* only, should be allowed in the contract of sale, between Mr. Fox and Mr. Mackreth, for the Furniture of the house at Horseley, which, it is said, was of much greater value, as Mr. Fox had lately made a considerable addition of upholstery articles, to the amount of 533*l.*

To this Objection it may be answered,—that Furniture, in general, is not much considered in bargains of this nature; and, without quarrelling with the evidence of the value, the fact assumed is too trivial to require any serious consideration. It is not pretended that Mr. Mackreth knew the value of the Furniture, and then the imputation amounts only to this;—that, in treating for an estate, for which so large a price was given as 39,500*l.* the Furniture of an old mansion-house was considered at the random price of 500*l.* without examining its real value.

Objection VII.—Mr. Mackreth, after agreeing to be a Trustee, for sale of Mr. Fox's Surry estate, and before he had treated about the purchase of it, secretly, sent Mr. Hampton, a surveyor, to examine it, and obtained from him a valuation, which he concealed from Mr. Fox.

Answer.—To support this charge there is not the shadow of a proof; and it arises solely from the admission of improper evidence. That evidence depends on the deposition of Anne Fleming, the housekeeper at Horseley, and extracts from Hampton the surveyor's books (as he had been long dead), which ought not to have been read in court, because they contain matter not specifically, or even generally charged in the bill, and therefore ought not to have been proved. It was an *ex parte* examination, and a surprise on Mr. Mackreth, who had no opportunity to contradict or explain it, which he could very satisfactorily have done, as will shortly appear; for, as it was not charged in the Bill, he could say nothing about it in his Answer; and, saying nothing about it in his Answer, he did not attempt, nor could he be admitted to offer proof concerning it;—the known rule being, that the matter must be *allegata* as well as *probata*, to prevent surprise on the other party.

It appears, indeed, on the first view, to have been the duty of Mr. Mackreth's Counsel to have objected to the reading it: but as this was a cause which involved an imputation on Character, it was, perhaps, upon the whole, a prudent conduct to let every thing be read, that was not

grossly fallacious. The purport of the evidence is opened by Counsel, and, in general, much stronger than it really is ;—the objection to reading it, let it proceed from what cause it may, never fails to create suspicion ; and the Court, especially when it is inclined against the party, supposes a great deal more in it, than the divulging of it will justify ; and, as there was every reason to expect that the leading, and indeed only question of the cause, the real value of the estate, would be referred to a Jury, when this charge of Hampton's valuation would be confuted,—the objection to the admission of this evidence, was I think, discreetly waved by Mr. Mackreth's Advocates. The fact was, that Hampton, the surveyor, was sent down to Horseley by Mr. Mackreth, not to value, but to take a survey of the estate in order to qualify him, to enter upon the Trust which he engaged to undertake for the disposition of it : and that he could not receive any account even of the survey, previous to the time when the Trust was lost in the Purchase, appears, in direct evidence, from Hampton's own books ; wherein it is specifically marked, that the survey, which employed only a few days, was not completed till *the day after* Mr. Mackreth had agreed to purchase the estate.

That Mr. Mackreth's employment of Hampton to visit the estate was not intended to be secret, is manifest from the evidence of Anne Fleming, brought forward by Mr Fox, to establish such an extraordinary charge. This woman, who was the housekeeper at Horseley, and appears to have been a most willing witness for what she was taught to consider as the cause of her master, acknowledges, that in December, 1777, she received a letter from Mr. Mackreth, informing her that a person would come to Horseley to look over the estate. This letter, the contents of which might have been very material to Mr. Mackreth, the witness professes to have lost or destroyed :—she recollects, however, that Mr. Mackreth employed Mr. Fox's name in giving this information ; and adds, that Hampton accordingly came to Horseley, and stayed four or five days, or a

week, at Mr. Fox's house, and, during that time, was employed with the Bailiff of Mr. Fox in looking over the estate. If, therefore, the sending Hampton to Horseley was intended to be a secret to Mr. Fox, such a mode of proceeding is not reconcileable to the conduct of a rational being.

First,—The Secret is divulged to the housekeeper of Mr. Fox, by a previous notice, in the form of a letter, written to her by Mr. Mackreth. 2dly, Hampton is secreted at the house of Mr. Fox, by living publicly at it. 3dly, The Secret is disclosed to the Bailiff of Mr. Fox. 4thly, The secret examination of the estate is performed by Hampton's going, in the most public manner, with Mr. Fox's Bailiff over the estate, and thereby publishing the secret not only to the tenants of it, but in fact to the whole country. 5thly, It appears from letters written by Mr. Fox, and which are exhibited in the cause, that he was resident at Horseley, at or about the time when Hampton was there. 6thly, It may be deduced from Anne Fleming's evidence, that Mr. Mackreth had planned the secret to remain unknown to Mr. Fox, by making use of Mr. Fox's name and authority, in the letter, he expressly wrote to her on that subject.

— Hampton, it is true, was employed to make a more exact and ample survey of the estate, after Mr. Mackreth had become the purchaser of it; but as the estate was so soon disposed of, any valuation of it became wholly unnecessary; nor does it appear from Hampton's books (in which there are not any charges, but for time employed in surveying the estate), that he actually made any valuation of it.

Objection VIII.—That Mr. Fox, when he agreed to sell the estate in question to Mr. Mackreth, reposed an unlimited confidence in him, as to the price of it, and that Mr. Mackreth took an undue advantage of that confidence.

Answer.—This Objection contains the principle upon which the Decree

against Mr. Mackreth was founded, as expressed by the words of the decree ; as well in respect to the extraneous subjects introduced into the cause, as to the real object of it,—the purchase of the Surry Estate :—But it is, in fact, applicable to none of them.

In the first place,—The Confidence did not exist ;—there is not a syllable of express evidence to warrant a contrary inference : and, all the circumstances of the case fairly taken, are against an implication of it. For the purpose of selling the estate to others, there was a temporary confidence, between Mr. Mackreth and Mr. Fox, from the time the former consented to be a Trustee for the sale : but for the purpose of a sale from Mr. Fox to Mr. Mackreth himself, there never was the shadow of a confidence :—From the moment Mr. Fox proposed to Mr. Mackreth to become a purchaser, all confidence was at an end :—they were at arm's length,—they were in a market,—they were seller and buyer ; and their conduct was such as is generally observed in persons, who are treating with each other for the sale of any commodity, concerning the price of which there is a difference of opinion between the parties. Though it really appears, on considering the actual value of the estate, on its being afterwards sold by the Page family, that Mr. Mackreth, who ingenuously acknowledges that he bought it on a speculation of profit, reasoned rather with the latitude of a Seller, than with the caution of a Buyer.

But, in the second place,—if even a confidence had been proved to exist, there is no circumstance in the whole series of these transactions, that can lead an impartial person to believe, that Mr. Mackreth took an undue advantage of it. For the whole of the cause turns, as has been said again and again, but which cannot be too often repeated, upon the price given for the estate ; and that has been incontrovertibly proved to have been not only a fair, but, according to all the ordinary rules of calculation, a very high price.

Objection IX.—That the treaty for the sale of the Horseley Estate was begun after dinner,—and was completed at midnight.

Answer.—The inference intended to be drawn, to the prejudice of Mr. Mackreth, from such a charge, needs no comment. Mr. Fox, however, in his bill does not even hint at intoxication, but left that amiable suggestion to enliven the eloquence of his counsel.—As to the hour of midnight,—the past twelve o'clock, which was again and again vociferated by those gentlemen, with all the outcry of a patrolling watchman, and was rather adopted by his Honour the Master of the Rolls,—what has it to do with the particular transaction, if the transaction in itself appears to be just?—There was, indeed, a time of simplicity and superstition, when the hour of twelve was considered as

—————“ The 'witching time of night,

“ When church-yards yawn'd, and graves gave up their dead ;”————

but in these rare times of procrastination, when every arrangement of fashionable life is carried on to the latest hours, the argument manifests, at least, the vulgar tenor of their lives who made it.

Had it been twelve o'clock at noon, when Mr. Fox, awakened before his usual hour of rising, and not recovered from the intemperance of the preceding night, had been thus called to business, with an head aching, and a mind smarting from his nocturnal dissipations,—in such a case, there might have been some ground for conjecture, that an undue advantage had been taken of him, in those beclouded moments ;—But twelve o'clock at night, is the precise hour of the twenty-four, when dissipated men find their faculties in the highest state of animation and vigour, and, according to the accounts, given in the pleadings, of Mr. Fox's mode of life at this time, twelve o'clock at night was the fairest period to transact a bargain with him.

But it has been urged, again and again, that even, if these several facts

are admitted to have been answered, yet being taken altogether, they afford a strong presumption of design and undue influence on the part of Mr. Mackreth.—*Non prosunt singula, juncta juvant.*

This is, indeed, not only an odious, but a delusive and dangerous Doctrine:—It is founded on no principle, and has but one precedent to support it; which is a very shameful example of its danger and injustice, and disgraces the history that records it. It is, really, a matter of no small difficulty to imagine a case that can erect it into a precedent; and, if any can exist, it must be where the case depends on circumstances, which, one and all, conspire to the same end, and cannot be accounted for in any other manner. But here, every transaction is separate and distinct, and arises naturally from the occasion.

When the first Annuity Transaction took place between Mr. Fox and Mr. Mackreth, how was it possible for the latter to know, that in the course of two or three months, he should be applied to by the former, in an emergency of great personal distress, to lend him 3000*l.* on mortgage?—When this loan was furnished, and a mortgage for it executed to Mr. Mackreth; by what spirit of conjecture could he be led to imagine, that he should, almost immediately afterwards, be requested by Mr. Fox to to be one of the trustees for sale of the Horseley estate to pay debts, &c. or that when he had consented to be a trustee, and, consequently met Mr. Fox, for the purpose of settling the trust, that it should be proposed to him, by Mr. Fox himself, to become a purchaser of the estate, and that he should actually purchase it?—And, surely, it was equally improbable, that he should foresee so extraordinary a circumstance as the offer which, within two months, was made to him by Mr. Page, and that he should gain eleven thousand pounds by the sale of it. In short, he might as well have foreseen, that, at the end of three years and a half after he had sold the estate, a suit would be instituted against him, on grounds of a supposed

fraud in the transaction, to compel him to refund the advantage he obtained by the sale of it.

Indeed, the more this doctrine of accumulation is considered, the more fallacious it will appear; and the folly of applying it to the circumstances of the case will become more conspicuous. It was on this tyrannical and wicked principle, that the EARL of STRAFFORD was attainted and executed.—PARLIAMENT, indeed, afterwards saw their error, and reversed the attainder: but the real mischief was without a remedy,—and PARLIAMENT, with all its powers, could not recall the life it had sacrificed.

The subjects in this cause, which remain for discussion, are the *annuity* of 350*l.* sold by Mr. Fox to Mr. Mackreth in June 1779, and the *two accounts* relative to the disposition of the remainder of the money, arising from the sale of the Horseley estate, which was left in Mr. Mackreth's hands to pay debts, &c.

With respect to the Annuity, it was purchased by Mr. Mackreth, in consequence of reiterated importunities from Mr. Fox, and to his own great inconvenience, as he was under the necessity of borrowing a great part of the money, in order to produce this friendly accommodation. It was, like the former annuities, bought at six years purchase, the common market price, and at a time when the public funds were so low as *sixty*. Besides, Mr. Mackreth was ready, at all times, to have terminated it, by receiving back the money whenever it should be offered to him; so that, if it had suited Mr. Fox, the annuity might have ceased almost as soon as it had commenced.

Nor is there any just ground to impute any improper motive to Mr. Mackreth, in this last transaction,—because he did not, at the time of granting it, adjust the 617*l.* 13*s.* which was the balance he then had in his hands, of the 28,403*l.* being the remainder of the purchase money for the Surry estate:—For doubts having arisen as to the title, and other-

wise in respect to some small parts of that property, he thought himself justified in retaining the balance of 617*l.* 13*s.* as an indemnification against the suspected deficiencies in the estate.—The good sense of which precaution has been particularly demonstrated by the subsequent event; as it may be proved, by the Records of Chancery, that Mr. Mackreth has been obliged to allow a deduction of above 1500*l.* from the price for which he sold the estate to Mr. Page, for deficiencies in the rental, on the faith of which, Mr. Mackreth made the purchase of Mr. Fox.

As to the *two accounts*, which the advocates of Mr. Fox have triumphantly represented as so replete with intentional error, they form a just and most honourable transaction on the part of Mr. Mackreth; and as to the existing difference between the first and second account, it is of a nature, that, one would think, the most determined spirit of litigation would be ashamed to represent as dishonourable to him.

The Accounts comprehend the application of the 28,403*l.* remainder of the purchase money for the Surry estate, left in Mr. Mackreth's hands at five *per cent.* interest, to discharge various annuities and other debts of Mr. Fox.

Of the expenditure of this sum, Mr. Mackreth sent his first account to satisfy the impatience of Mr. Fox, as early as October 1778, which is within half an year after the conveyance of the Surry estate to Mr. Mackreth; and, in this account, he allows interest at five *per cent.* for the money remaining in his hand, from time to time, even for single days: so that Mr. Fox gained upwards of 700*l.* by not adopting Mr. Farrer's proposed plan of depositing the money at a Banker's.

The balance due to Mr. Fox on this first account being 773*l.* 18*s.* 9*d.* Mr. Mackreth paid it to Mr. Farrer, by the order of Mr. Fox. There were, however, two sums included in this account, for the redemption of two annuities, which were not charged as *actually paid*, but as *to be paid*;—and it so happened that, from Mr. Mackreth's active care and

zealous attention in settling Mr. Fox's debts, he was so fortunate as to redeem these Annuities for a *much less sum than he calculated upon in the account which has been just mentioned*;—when, therefore, Mr. Mackreth sent in his second account in May, 1781, Mr. Fox was credited with a further balance of 617*l.* 13*s.*—But this latter account differed from the first in no other respect, than in some additional small payments, and the calculation of subsequent interest. Mr. Mackreth, however, retained this last balance in his hands; and, as it has been already observed, he was perfectly justified in so doing, both to indemnify himself against the objections made by the Page family for defect of title, and other deficiencies in part of the Surry Estate, as on account of the Annuity of 350*l.* he had purchased of Mr. Fox in 1779, on which there was at this time due an arrear of almost two years.

As to the vouchers, they accompanied the accounts, and were ready to be delivered up;—but Mr. Fox had neglected to bring with him Mr. Mackreth's accountable receipt for the trust money; and, therefore, it was agreed that they should be left with a third person, till Mr. Fox delivered up that paper.

Such is the nature of the several questions which form an intrinsic part of this cause,—as well as of those which have been introduced, in order to awaken prejudices on the real object of it. The only point in dispute was simple in itself, and of the most easy decision: but in order to perplex it, and to work out an appearance, if possible, of something like an undue advantage being taken of Mr. Fox by Mr. Mackreth, no small mass of irrelevant matter has been forced into the cause, with a view to give the whole of it the unfavourable aspect of business involved in Annuity Transactions; whereas nothing can be more apparent, than that advancing the money to Mr. Fox on Annuities for his life, was doing that, which nobody besides would do at the time;—which the very friends of Mr. Fox, who have now brought him forward to accuse Mr. Mackreth of a design to defraud him,

were not able, or shewed no disposition to do, in that or any better manner.—But supposing it were otherwise, the Annuities have nothing to do with the principal question of the cause; which, in the opinion both of the Master of the Rolls and the Lord Chancellor (indeed, no other reasonable opinion can be formed of it), depended entirely on the adequacy of the price given by Mr. Mackreth for the Estate.

The subsequent sale of the estate to Mr. Page, at the advanced price which has been so often mentioned, affords no just argument for considering the price at which Mr. Mackreth originally bought it, as inadequate,—and even if the advance of price could be in any degree relied upon as an argument, it would be repelled by the evidence already given of the loss the late Mr. Page sustained, from purchasing at so high a price; as well as by proving that loss to have exceeded more than twice the apparent gain to Mr. Mackreth.

Besides,—if in this commercial country, contracts are to become subject to those principles which have been the foundation of the Decree in this cause, grass would soon be seen to grow on the Exchange of London:—and, if after the quiet enjoyment of property for several years, and the successive sale of it to different purchasers, an original contract can be legally or equitably rescinded, as in the cause before us, a precedent is established for unsettling the most solemn and confirmed engagements, and which is sufficient to alarm and confound mankind, in their necessary, as well as more important transactions with each other.

But after all,—there was a mode of settling this long litigated business without a possibility of error;—in which prejudice could have had no influence, fallacious conjecture could not have been indulged, and where the real truth would have been irrevocably established; and that was—by *sending the matter to a JURY*, to have obtained a certain decision on the only real question in the cause;—whether the Price, paid by Mr. Mackreth, was, or was not, the Value of the Estate?—Jackman, the surveyor,

would then have been examined to prove the truth of his valuation;—Mr. Farrer would have been examined as to the various parts he acted in the business; when the ignorance he manifested concerning the sale of the estate to Mr. Page, &c. would have been confirmed or controverted,—and the propriety or inconsistency, the interested or disinterested views of his particular demeanour would have been made apparent to the Court; when the question, whether Mr. Mackreth, at the time of the agreement, knew that he could sell the estate to Mr. Page, or any other person, to a greater advantage,—and whether he had in his possession a valuation made by Hampton, his surveyor? might have been made the subjects of minute and decisive inquiry:—when every other material circumstance might have been sifted, and discovered by an examination of witnesses, *viva voce*, and cross examination; instead of being taken up on partial and imperfect depositions, as too frequently happens in the practice of the Court of Chancery.

And here I have a right to assert, because I would most willingly rest the justice of Mr. Mackreth's cause, and the honour of his name upon the truth of the assertion,—that if this predominating question had been offered to the attention of a Jury, the *following facts*, among others of a similar effect, would have been *clearly and indubitably established*.

That the late Mr. Page had, according to the evidence in the cause, sold off the Horseley part of the estate in parcels, to some by auction, to others by private contract, for 18,433*l.* 5*s.*

That the same gentleman by his will, dated March, 1781, devised the remainder of the estate, being what is called the Cobham part, to Trustees, in trust to sell, with a liberty to his Son Thomas Page to buy it at a fair valuation, to be made by a surveyor of reputation.

That the said Trustees did accordingly, in June, 1781, sell and convey the whole remainder of the estate, purchased of Mr. Mackreth, to Mr. Page, the son, for the sum of 9000*l.* being the price at which the property

was valued, by a surveyor named by Mr. Page and the trustees of his father's will; which sum, being added to that produced by the sale of the Horseley part of the estate, in the lifetime of Mr. Page the elder, forms the following total:

£.	18,433	5	0
	9,000	0	0
£.	27,433	5	0

So that the estate in question was finally sold for 23,066*l.* 15*s.* less than the price which the late Mr. Page gave to Mr. Mackreth;—and for upwards of 11,560*l.* less than the price paid by Mr. Mackreth to Mr. Fox.

By an Issue at Law it would also have appeared, and a very extraordinary circumstance it is,—that a short time previous to the institution of the suit in Chancery by Mr. Fox against Mr. Mackreth, on the ground of his having bought the estate at an *injurious under-value*, Mr. Page, the son, had actually filed a bill against Mr. Mackreth, on the ground that he had sold it to his late father, at an *exorbitant over-value*.

It would also have been proved, that Jackman had *over-rated* the annual profits of the manor 13*l.* *per ann.* on an average receipt of them, during the last twenty years;—as well as that his *supposed advance* of the rental, of 72*l.* has never been obtained by the successive possessors of the estate; and that his boasted plan of *inclosing* the common-field part of the estate, which, in his opinion, would have so greatly raised the annual income, is an idle and fruitless expectation.

Nor should it be omitted, that the real object of Mr. Hampton's business at Horseley, when he was sent there by Mr. Mackreth, would have appeared to have been, on the first visit, in the *preparatory service* of the Trust, which Mr. Mackreth had engaged to execute;—and that on the

second visit, he had not proceeded so far as to make a *valuation*, which, as the estate was sold to Mr. Page, was no longer of any consequence to Mr. Mackreth.

The Issue, therefore, must have been favourable to Mr. Mackreth: so that, instead of the loss of his property, which he has since sustained and paid, and the continued series of attacks upon his character, as well as the added expences of a tedious and extended litigation, Mr. Mackreth would have gained his cause, and I should have been spared the painful task of examining the Decree which determined it against him.

Nor can I discover,—and, in the anxious as well as studious attention I have given to these proceedings, the inquiry has never quitted my mind for a moment, upon what principle of justice or of policy the proposition, so strongly and so ably urged by Mr. Mackreth's counsel at every hearing of the cause, to send the leading question of it to the determination of a Jury, was every where refused. I am ready to admit that Courts of Equity determine upon fraud, but it is in cases which leave not a doubt upon it:—otherwise, a Court of Law is the proper, and the only proper jurisdiction, where it can be satisfactorily determined,—and a Jury, the proper, and the only proper, judges, to decide upon it. To prevent, therefore, what has been so repeatedly and so justly called the predominant, nay the sole, question in the cause, from being offered to that jurisdiction, which could alone fully investigate and accurately determine upon it, was, to say no more, a denial of those fair and legal means, which Mr. Mackreth had a right to expect would be granted to him, of preserving his property and maintaining his character, both of which have been very materially injured by the Decree pronounced against him.

The motives to this Decree, as declared in a very long speech, made by the Master of the Rolls, previous to his pronouncing it, are involved in the Objections, already, as I trust, so fully and completely answered. I shall, therefore, only mention them in their order.—

I. He considers the advancement of 5100*l.* on the two annuities in the year 1777, as an impure transaction, and that Mr. Mackreth might have taken a more liberal security. Answered page 31.

II. That Mr. Farrer should have been consulted in all the transactions between Mr. Mackreth and Mr. Fox; and that their not being communicated to him, is a proof of their being stained with circumstances which were not fit to be communicated to any friend of Mr. Fox, or his family. Answered page 43.

III. That Mr. Mackreth treated with Mr. Fox for the purchase of the estate, with a secret valuation of it, made by Hampton, the surveyor, in his possession. Answered page 54.

IV. That the accounts aid the other circumstances, which had been introduced into the cause, in compelling him to form the opinion on which, and on which alone, his decree is founded,—That Mr. Fox placed a most unlimited confidence in Mr. Mackreth, and that Mr. Mackreth took an undue advantage of it, to purchase the Surry estate, for less than its real value. Answered page 56.

Such are the opinions on which the Decree was framed, which has so greatly injured the fortune and character of Mr. Mackreth:—Nor can I reconcile it to the notion I have ever entertained, that the power of Courts of Equity is not arbitrary or speculative, but restrained by sound and clear principles of right and wrong.

This Decree declares, that the different orders of it rest entirely on the fact,—That *undue advantage* was taken, by Mr. Mackreth, of the *unlimited confidence* reposed in him by Mr. Fox. Now I do not hesitate, boldly and honestly to assert, and I trust the foregoing pages will justify the assertion, that this very declaration, upon which the Decree, in all its parts, professes to depend, is totally destitute of support in the facts which it presumes; and that the orders or directions which appear on the face of it, consequential to the Declaration, are many of them not warranted by

the Declaration itself; and are, none of them, supported by evidence in the cause.—Indeed, the Lord Chancellor, though he afterwards affirmed the Decree, in a very long and minute discussion of the several transactions of the cause, differs, as will be shortly seen, in every material point of it, from the Master of the Rolls.

I cannot, however dismiss the Hearing at the Rolls, without offering a few observations on the conduct of Mr. Fox's counsel, in the public pleadings of it.

Sir John, then Mr. Scott, took the lead in this career of unparalleled, professional obloquy, with a degree of virulence and acrimony, which no instructions in his brief could justify, as the Bill and Answer, which gave the History of the Cause, formed the principal part of it. Indeed, he delivered his opinion of Mr. Mackreth in those gross terms of reproach which almost persuaded me, that I was reading the speech of an hardened bullying counsel at the *Old Bailey*, pushing, with the most unfeeling impetuosity, for the conviction of a prisoner at the bar of it.

Mr. Scott thought proper to employ the following, among other similar and less acrimonious, as well as equally groundless expressions.—“*That Mr. Mackreth had been guilty of a more gross and enormous fraud, than had ever been discussed in a Court of Equity:*” and that “*there never was stated to a court, a more systematic and unsparing plunder, than had been practised by Mr. Mackreth on Mr. Fox.*”

When, therefore, it is known that such descriptions of the conduct of Mr. Mackreth were loudly given before a very crowded audience, and that, in the progress of the cause, or even in the Decree which followed, no circumstance whatever appeared to justify such degrading declarations,—what honest, impartial, and humane person will not join me in pronouncing them to proceed from an artful, insidious, but cruel design, under the protection of a court, and from the lying instructions of a brief, to stab the reputation of Mr. Mackreth, in order to get

at his property ; and that such conduct was a shameful sacrifice of reputation to the interests of a cause.—Mr. Scott may boast of his zeal in support of his clients ; but I deprecate the man who suffers himself to be governed by it, at the expence of every sensibility, that does honour to the human character.

The other counsel, with the same instructions, and with as honourable zeal, I presume, for the cause of Mr. Fox, followed their leader, in the path of reprobation, *baud passibus æquis*. They too were taught not to spare the character of Mr. Mackreth,—but, either from prudence or justice, they fell very short of that abusive language, which Mr. Scott employed to heighten the natural energy of his eloquence.

As for the Master of the Rolls, I do not assert, for I cannot believe, that he, or any British Judge, could so degrade his important character, as to indulge an improper bias in any cause which may come before him. But there are certain influences which may imperceptibly affect the best of men,—and Judges among the rest, for they are but men, to a perplexing interruption of their understanding. His Honour had not only originally advised the suit between Mr. Fox and Mr. Mackreth, but had pleaded in the early part of it: and it is not impossible but the former impressions of the Counsel, might, somehow or other, remain, in spite of himself, in the breast of the Judge.* For I do not hesitate to mention, that, according to the Pleadings, as taken in short-hand at the hearing, almost every observation, made by the Master of the Rolls,

* I was present, at the hearing, on a petition of Lady Strathmore, to obtain the guardianship of her children, from the executors of her late Lord, when Mr. Scott, who was counsel for her Ladyship, employed the following emphatic address to the Chancellor:—
 “ On a former application of this nature, your Lordship was counsel against Lady Strathmore,—and I implore your Lordship, now you are to act as a judge, to forget any
 “ impressions that you might have received as a counsel.” The Chancellor consoled the learned advocate by replying, that he had wholly forgot the circumstance.

appears to be decidedly in favour of Mr. Fox, while his counsel were speaking; and as forcibly against Mr. Mackreth, when his advocates were defending his conduct and character.* At all events, he would have acted with a delicacy suited to the occasion, if he had waved, as many other judges have done, the being a judge in a cause, in which he had been employed as a counsel.

Having observed thus cursorily upon these exteriors of the Cause, which, in justice to Mr. Mackreth, I could not pass by unnoticed or unchastized, I proceed to the hearing of it, on the Appeal to the higher Court of Chancery; or rather, briefly to consider, the opinion which the Lord Chancellor seemed then to entertain of the matter in argument before him.

After hearing the counsel on both sides, through the progressive and tedious length of several days, his Lordship made a very long discourse on the subject before him, full of various and material observations, in which, however, he did not appear to agree in any one material point with the Master of the Rolls; but seemed rather disposed to confirm his own former opinion on the interlocutory judgment.

I.—His Lordship expressed himself in a very pointed manner against Annuities at six years purchase; and was of opinion that the money might have been advanced in a more liberal manner.

This objection has been fully answered, pages 5, 31, and 34.

II. He disapproved of Mr. Mackreth's continuing the Annuities from

* When one of the counsel on the part of Mr. Fox presumed, in the way of fanciful argument, that, in order to induce Mr. Fox to sell the estate, Mr. Mackreth shewed him the 1600*l.* he had agreed to lend him, and refused to let him have it, unless he consented to enter immediately into the proposed contract, his Honour observed,—“ That it was a “ very Evil Being who shewed the kingdoms of the world and the glories of it.”—On the propriety of a Judge comparing a party in a cause, then only in argument before him, to the Devil, I shall leave my readers to make the observations which may, possibly, occur to them.

the 24th of December, 1777, when he bought Mr. Dawes's interest in them, to the 16th of January following:—they ought, in his Lordship's opinion, to have been converted into a loan at the first period.

Answer.—The difference is but *three weeks*, and, either one way or the other, it is not an object of serious consideration.

III. He expressed a very decided opinion that Mr. Mackreth, when he agreed to sell the Surry estate to Mr. Page, at so large an advanced price, previous to the final conveyance of it to himself, should, in point of honour, have communicated that circumstance to Mr. Fox, and considered himself as a Trustee. This concealment, as it was called, was remarked upon by his Lordship in terms of great disapprobation.

Answer.—Notions of honour are not objects of decision for Courts of Law.—The opinions of men on that subject are very different, and it would be a matter of no small difficulty to establish a rule, by which the varying ranks, stations, and professions could be regularly governed in this branch of human conduct. The Honour of a Soldier, a Trader, and a Gamester, differ as much as the respective objects of their pursuit. Mr. Mackreth frankly declared that he purchased the estate of Mr. Fox, with a view to some advantage, and if that advantage proved to be greater than he had the least reason to expect, there is no established principle of honour, that I know of, unless it is a principle of honour to be the dupe of all mankind, and to die a beggar, that could impel Mr. Mackreth to transfer the advantage to Mr. Fox. If he had, as was by far the more probable case, been under the necessity of selling the estate for a much less price than he had given for it, would Mr. Fox have been bound in honour to reimburse his loss?—Certainly not. But be that as it may,—there can, at least, be no doubt, that if Mr. Mackreth failed in point of honour, by not offering to Mr. Fox the advantage of a subsequent sale, Mr. Fox, surely, has been guilty of a very gross violation of that principle, in having instituted a suit in Chancery to compel him to restore it.

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ON THE OTHER HAND,

The Lord Chancellor threw out the following opinions in favour of Mr. Mackreth:

1st. His Lordship declared, that *he could not discover* Mr. Mackreth's loan of 3000l. to Mr. Fox on mortgage, to be part of *any plot or design to obtain his confidence*, a point so materially argued, and repeatedly enforced by Mr. Fox's Counsel.

2dly. He approved of Mr. Mackreth, and Mr. Dawes as Trustees. His Lordship's words, on the occasion, have been accurately taken, and are as follows:

" If I had sat by while Mackreth and Dawes were recommending themselves upon the occasion (though it should be observed they did not commend themselves,—the trust was *proposed to* them), *I should have agreed with them*, in the recommendation, and in their objects."

His Lordship continues—" Then who were the persons to be put in their place? *Lord Grantley* and *Lord Ligonier*, because they were Lords; I know of no other reason for putting either of them in; it was not likely that either of them would venture into the interior distress and embarrassment of this young man's affairs, and have worked much in their deliverance. Why are people, with names of that sort, to be better Trustees in such a business as this, than men who would actually do the business?"

3dly. He considered Mr. Mackreth's observations on Jackman's Valuation of the estate, in the progress of the treaty between him and Fox, as by no means unnatural or unfair.

4thly. He was of opinion, that the charge of Hampton's Valuation, as urged by the Counsel of Mr. Fox, was not made out. " It is said, observed his Lordship, " that Mr. Mackreth sent down this Agent to value the

“ Estate, as meaning to treat for himself; but I think the fair construction
“ is, that he sent him in the character of a Trustee.”

5th. He declared, in these precise terms, “ That the Confirmations fol-
“ lowed so naturally from the occasions, that they cannot be said to
“ have been sought for by way of obtaining Confirmations.”

6th. His Lordship even declares, that *he cannot discover any unlimited confidence* (which is the sole and avowed basis of Sir Lloyd Kenyon’s Decree) to have been placed by Mr. Fox in Mr. Mackreth. “ They
“ seem,” said the Chancellor, “ to have dealt upon such terms as men
“ generally deal, while the subject lies before them; while one asserts it is
“ of less value, the other that it is of greater value. Neither depend upon
“ the assertions of the other, but each try to make the most they can, in
“ order to sell the estate.”

7th. He appeared to entertain doubts of the ignorance of Mr. Fox’s Friends and Solicitor, Mr. Farrer, as to the sale of the estate to Mr. Page, &c.; and expresses his disapprobation of the great interval between the sale of the estate to Mr. Page, and the institution of the suit. I shall give his Lordship’s own words on the subject:

“ Upon the 28th of April, 1778, when the Estate was conveyed by Mr.
“ Fox to Mr. Mackreth, it was not understood that the latter had made
“ an undue advantage; it was not understood, during all the time of his
“ (Mr. Fox) confirming this, by instruments accidentally tendered. Upon
“ all the view he has upon the subject, during all the time, he has not
“ seen any occasion to complain; and, in that view of the subject, the
“ confirmation goes still further; for no complaint was made upon this
“ head, till June 1781; for the whole of the years 1778, 1779, 1780,
“ nay, for three years and an half, no complaint was made upon the
“ subject.

“ Surely, therefore, it is fair to infer, that so notorious a dispro-
“ portion as that which accident has brought out, of a one-fifth of the

“ whole value, was no part of the suspicion of those who were con-
 “ cerned for Mr. Fox; it was not part of the suspicion of Mr. Farrer;
 “ for, in all that time, there was not a moment, in which a suit would not
 “ have had a better countenance, and would have been better to have
 “ been brought on than in 1781. If you stay three years and an half, why
 “ not six years? And when are men’s affairs to be at rest, if not when they
 “ have stood the observation of years, and the confirmation of transactions
 “ among them, even of the party himself, who complains of being injured?
 “ When are they to be at rest, if not so late as the period laid down of
 “ three years and an half?—nay, it is more than that.

“ It is impossible,” his Lordship adds, “ as it seems to me, that if it
 “ was an estate that lays near London, in the view of the Parties to sell,
 “ so long a time as that had been sold at a gross undervalue, that they
 “ should want the indications of its being actually sold to Page!

“ Upon that ground, therefore, the circumstance of having waited so
 “ long a time before they brought this Bill, and done so many transactions
 “ that tended to an acquiescence in it, with a full view of it, in all respects,
 “ seems to have a great deal of weight in the cause.

The Lord Chancellor concluded his speech in the following manner:

“ I have stated the thoughts which occurred to me now, with a view
 “ to putting them in possession of the Bar, and those who have heard
 “ me; because, it is possible, I may find it necessary to have this matter
 “ undergo a further consideration even by me. Having conversed upon
 “ it, as I was anxious to do, with his Honour the Master of the Rolls, and
 “ very near half the Judges in the Courts of Westminster Hall, and, after
 “ every representation I was able to give, there was a doubtfulness of
 “ opinion among them, as to the laying down a rule of Law to the extent
 “ now contended for.

“ I confess, I hesitate upon this, to lay down any such rule on the sub-
 “ ject. It is of no use to lay down the rule of Law, if you will interpose

“ indefinite rules of evidence, in order to bring men within this or that
 “ description.

“ It as material to the quiet of men’s transactions to have one of those
 “ points settled, as it is the other ; and I find myself it is necessary to the
 “ pronouncing of Judgment, to get a further examination into the actual
 “ value of the estate, or how is my mind to have the assistance of those
 “ who will, at least, furnish me with the means of laying down those rules
 “ for decision, which will set men at ease about their property ; that when
 “ they observe a transaction of the sale of an estate, cut down for the
 “ excess and disproportion of value, after it has been settled by articles,
 “ confirmed by a conveyance, and repeatedly confirmed by transactions
 “ upon it, and acquiesced in for three years and an half ; and that I may
 “ know how to state such a case to mankind, without putting them in a
 “ tremor for the rest of their transactions.”

Such were the opinions of the Lord Chancellor after the cause had been most ably and elaborately pleaded before him ;—and with such opinions, which not only went to the absolute subversion of the arguments employed by the Master of the Rolls preparatory to his Decree, but also of the Declaration itself, which formed the sole basis of it ;—I say, with such opinions, and all their concomitant doubts and evident hesitations, I know not how to reconcile his Lordship’s subsequent affirmation of the Decree : I do not say to his integrity, for that can not be suspected, but to my particular conception of the stern, impracticable character of his Justice. On this subject I am perplexed—I am confounded—and I am silent. I can only add, that, in affirming the Decree, he did not give a single reason for the entire change of opinion, which must have been produced in his mind, since he heard the merits of this important cause.

After application had been made to the Chancellor, for a re-hearing, and made in vain,—Mr. Mackreth, according to his Lordship’s particular commendation, appealed to the House of Lords.

And here it may be curious to observe,—but so the fact was, that, on the hearing at that bar, all the arguments which the Counsel of Mr. Fox had made with such acrimonious violence at the Rolls,—and with a more regulated zeal before the Lord Chancellor, *were now deserted*:—it was no longer *Fraud*, or *Breach of Confidence*, that was charged to Mr. Mackreth, but a *Concealment*, from Mr. Fox, of the Transactions, between him and Mr. Page, relative to the agreement entered into for the sale of the Horseley Estate to the latter.

What, therefore, can any reasonable man think of a case, so managed and so manœuvered?—The first ground in argument, as in battle, when it is in the power of the party, whether civil or military, to choose it, is always the best;—when they are beat from that, they take post in an inferior situation; in short, they fly to the best they can get. It was the uncommon fate of this cause to have been argued *three different times*, at no inconsiderable distance from each other, and *each time in a different manner*. What was a matter of confidential reliance at the Rolls, was *deserted* on the Appeal to the Lord Chancellor,—and what was urged with seriousness in the Court of Chancery, was *also deserted* at the Bar of the House of Lords.—What opinion, shall I repeat, can any intelligent person form of a cause, where the ablest advocates are obliged thus *to shift their ground*, and are at a loss on what principles to argue it.

But notwithstanding all this incongruity in the conduct of the cause,—notwithstanding the simple fact that claimed an establishment in it, whether Mr. Mackreth gave Mr. Fox an adequate value for the Surry Estate or not,—notwithstanding, if there was any doubt hovering over it, an Issue at Law would have settled the matter, by the clear, unerring decision of a Jury,—Mr. Mackreth was doomed not only to have the Decree against him re-affirmed, though the principle of it had been abandoned by the Advocates pleading to support it,—but re-affirmed with unparalleled rigour.

Lord Kenyon, who had been promoted to the King's Bench and a Peerage, and, for whose convenience, that he might attend the Hearing of the Appeal, it had been avowedly postponed,—Lord Kenyon, I say, uttered not a word in support of his own decree; the Lord Chancellor did not open his lips in support of his affirmation of it:—but Lord Loughborough (after briefly stating the principal transactions of the cause, with much apparent severity) moved, that the Decree complained of might be affirmed; and that Mr. Mackreth should be ordered to pay 200*l.* costs to Mr. Fox,—*for his presumption in bringing that Appeal before their Lordships.*

That a constitutional right, constitutionally exercised, should be called *a presumption*;—That a regular act of legal process, advised by such men as Mr. AMBLER, Mr. SELWYN, Mr. HARDINGE, and Mr. HARGRAVE, should be called *a presumption*;—That an Appeal from a Decree which, in its course through the Court of Chancery, Lord Thurlow himself considered with so much doubt and hesitation; and on which several of the Judges, who had been consulted thereon, differed as to the pernicious effects of it,—That such an Appeal, I say, should, be called *a presumption*, can be reconciled alone to my understanding, by those considerations of human nature, which trouble me in the conception—and which I dare not trust my pen to realize on the page before me.

I am not, however, afraid to observe, that the great Constitutional Right of Appeal to the House of Peers, if the Lords in general suffer themselves to be governed in judicial matters, by the few ennobled lawyers who sit among them, is rendered fruitless and abortive.

The question, which has been the object of my prolonged consideration, is not beyond the comprehension of any man of the most common understanding; and, in the House of Lords, the Judges are ever at hand to explain, illustrate, and expound the Law. Appeals were not originally of this kind:—Indeed, unless all judicial men were of the same mind and

disposition as the excellent Lord Talbot, who is known to have argued and moved for a repeal of his own decree, the object of appeals is in a great measure lost, when they are made from a Judge in one place, to the same Judge in another. My feelings, at this moment, are serious almost to depression; and yet the very idea of such a picture of progressive Justice, awakens a disposition, in my mind, to relax into jeer and ridicule.—But so it is.—

Indeed, the motion to punish the Appeal, by a fine of 200*l.* went not only very forcibly to the reputation of Mr. Mackreth, but pointed, in some degree, at the professional characters of the learned Gentlemen who advised it; all of whom are equal to the noble Judge, in professional honour, and, I believe, very much his superiors, in professional experience, brilliant talents, and legal erudition.

Thus have I proceeded through this long course of argument and reflection:—I have stated every Objection made both by the Bar and the Bench, to the prejudice of Mr. Mackreth, and have answered them all, as I trust, fully and fairly to the conviction of every Impartial Man. More attention has been given to the inferior circumstances of the cause, than they would have been thought to deserve, if the insidious motive, with which they appear to have been foisted into the Pleadings, to blacken, with unmerited odium, the Character of Mr. Mackreth, had not given them a comparative importance.—They became objects of attention only from the reptile mischief connected with them. They have, however, spit forth their venom, and are no more:—while Mr. Mackreth's Reputation, which has been smeared in the Briefs of Counsel, and blotted in the Note-Books of Judges, is, I trust, at length, restored to its true reading, in the fair Volume of Public Opinion.

The only real question of the cause, *Whether Mr. Mackreth gave to Mr. Fox an Adequate Value for the Horseley Estate*, is incontrovertibly answered.—He gave a price that far exceeded the value of it: and on the

substantial Justice of the Decree, therefore, there can be but one opinion. —Nor do I speak unadvisedly, when I say,—that it will moulder away on the record that contains it, and never be admitted into the books as a report, to furnish matter for future arguments at the Bar, or an example for future judgments on the Bench.—It will, I believe, be never quoted as an authority in Westminster Hall.—But be that as it may,—it has been affirmed by the House of Lords, and a compelled submission waits upon the Affirmation.

But submission and assent are very different principles.—Submission must follow legal decision, whether right or wrong; while assent cannot proceed but from real conviction:—and I must own, that my understanding retreats with alarm from this Decree.—In short, my ideas of Legal Justice are unsettled by it. Nor can I, after a most attentive and painful examination, consider it in any other view, but as an affecting and melancholy proof,—that,—notwithstanding the boasted purity of our laws, and the vaunted wisdom of our Judges, with the *best cause* it would be presumption to be certain of success,—and with *the worst*, it would be folly to despair!

APPENDIX.

A Copy of Mr. Oliver Farrer's Letter to Mr. Mackreth of April 7, 1778, accompanying the Draft of the Conveyance of the Horseley Estate from Mr. James Fox to Mr. Mackreth, in which he does not object to the Agreement for Sale of the Estate to Mr. Mackreth, nor to the Conveyance of the Estate; but only to the Remainder of the Purchase-Money being left in Mr. Mackreth's Hands for Payment of Debts, and not being placed with a Banker.

"SIR,

"I HAVE read over the Drafts of the proposed Conveyance from
"Mr. Fox to you, and likewise a Draft of an Assignment of the purchase
"money, which I received on Friday last. With regard to the Convey-
"ance, I have made several memorandums on the margin, which seem to
"me to be necessary to be attended to. As to the assignment, I cannot,
"as matters are now circumstanced, in any respect approve thereof on
"behalf of Mr. Fox: It purports to be an assignment of the whole pur-
"chase money (save what is already secured to you) to Mr. Dawes and
"yourself in trust to pay the several debts mentioned in the schedule, or
"such of them as the trustees shall think proper. There is no time men-
"tioned for payment of those debts; nor is there any stipulation for pay-
"ment of the interest for the residue of the purchase money till it is applied;
"nor is there any Covenant of Agreement by the trustees that they will
"apply it; nor is there any power given to Mr. Fox, or any person on

M

" his behalf, to see to the application. *It strikes me, that your situation*
 " *as a purchaser, is totally different from that of a trustee, as was origi-*
 " *nally intended. The agreement* for the sale, which I never saw till
 " Friday, and of which, on my application I received a copy on Satur-
 " day night last, *I must consider as binding on Mr. Fox; but I can-*
 " *not advise him to execute any Conveyance till the whole purchase money*
 " *is paid or deposited.* You have under the agreement a right to retain
 " your mortgage money and interest to the time you took possession; as
 " to the residue, it ought, on or previous to the execution of the con-
 " veyance, to be paid into the Bank, or into the hands of some safe banker,
 " in the joint names of you and Mr. Fox, or such person as he shall ap-
 " point, and a declaration ought to be executed that it is to be deposited
 " in trust, to be applied according to the stipulation in the purchase agree-
 " ment : This agreement is express as to redeeming the annuities granted
 " by Mr. Fox, and that of course must be done. As to such other debts as
 " may be considered to be a lien on the estates, that may be determined by
 " the opinion of one or two counsel on a state of the facts; and so much
 " of the debts as shall by them be deemed a lien on the estates must be
 " discharged. This seems to me to be all that is necessary for the safety
 " of a purchaser. The residue of the money not thus applied, will of
 " course belong to Mr. Fox, to be disposed of as he thinks fit. This
 " seems to me the proper mode of concluding the business, and I cannot
 " approve of any other on behalf of Mr. Fox. The treaty for the sale, and
 " the agreement in consequence of that treaty, were carried on and entered
 " into without my privity or knowledge; but Mr. Fox having desired me
 " to see the agreement thus entered into carried into execution on his
 " part, I flatter myself, although I cannot approve your plan, you will
 " not blame me for giving my sentiments freely upon a matter of such con-
 " siderable import to Mr. Fox, and intrusted by him to me. I send Mr.
 " Fox a copy of this letter by his servant, and inform him that I think it

"highly necessary he should be present on the conclusion of this business.
 "If he should think proper to come over, I shall advise him, in case of
 "any objection to the plan I have suggested, to leave it to any counsel of
 "eminence to determine on a better."

It has been thought sufficient to subjoin only the *second Account* sent in by Mr. Mackreth to Mr. Fox. It materially differs from the *first* but in two articles; viz. Two Annuities which were charged in the *first Account*, as *to be paid*,—and in the *second*, as *finally discharged*.

Mr. Fox, being extremely impatient to receive an account of the purchase money left in Mr. Mackreth's hands, for the payment of debts, &c. that gentleman, to satisfy his impatience, sent his first account as early as October 1778, which is within six months after he had purchased the estate; but as there were two Annuities yet unsatisfied, Mr. Mackreth charged them in that account, *not as paid*, but as *to be paid*: viz.

To Massey's annuity, purchased at seven years, and repurchased at six and an half, with arrears, <i>which is to be paid</i>	-	705	14	10
To three months and two days interest		9	7	3
		715	2	1

To Richard Peale's annuity purchased at six years and an half, and bought in at six years, with arrears, <i>which is to be paid</i>	-	960	0	0
Four months eight days interest on ditto		17	1	0
		977	1	0
		£. 1692 3 1		

But these two annuities being afterwards bought in at a *much less sum*

than Mr Mackreth had estimated as above,—the difference between the price thus calculated *to be paid* in the *first Account*, and the price charged *as actually paid* in the *second Account*, together with some additional small payments, and the calculation of subsequent interest, occasioned all the variation there was in the two accounts; which being very much to the advantage of Mr. Fox, and an evident proof of Mr. Mackreth's honourable zeal in the application of the trust money, for the interest of Mr. Fox,—it will, I doubt not, appear to every unprejudiced understanding, as it has appeared to mine, a very extraordinary circumstance—that the *variation in the two accounts*, which has just been stated, with a most scrupulous adherence to facts, should have been imputed to Mr. Mackreth as a fraud.—But it is of a piece with the whole manufacture of this very singular cause.

A Copy of the second Account of the Trust Money.

JAMES FOX's, Esquire, Account with ROBERT MACKRETH, Esquire.

1778, April 25. By Mr. Mackreth's note to Mr. Fox	28,403	0	0
To your servants at Horseley	158	12	7
To Joseph Dejardines	-	200	0 0
			358 12 7
			28,044 7 5
29. To four days interest on 28,044 <i>l.</i> 7 <i>s.</i> 5 <i>d.</i>		15	6 10
			28,059 14 3
To Lord George Cavendish	-	4,000	0 0
			24,059 14 3

	£.	s	d.
May 1. By two days interest on 24,059 <i>l.</i> 14 <i>s.</i> 3 <i>d.</i>	6	11	10
	24,066	6	1

To J. Stables	-	5,289	10	0
To Ware and Myers	-	530	18	9
To Joseph Wood	-	987	14	11
To P. Wentworth	-	500	0	0
To J. Stapylton	-	500	0	0
		7,808	3	8

16,258 2 5

2. By one days interest on 16,258 <i>l.</i> 2 <i>s.</i> 5 <i>d.</i>	2	4	6
	16,260	6	11

To Mr. M'Carthy	-	-	1,162	10	0
		15,097	16	11	

4. By two days interest on 15,097 <i>l.</i> 16 <i>s.</i> 11 <i>d.</i>	4	2	8
	15,101	19	7

To Mr. Feesey, principal on note	-	-	442	0	0
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To interest on ditto from the 23d day of June 1774 to this day, three years ten months eleven days	-	85	7	7
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To Mrs. Fox's letter of licence creditors	-	430	13	10

958 1 5

14,143 18 2

May 7. By three days interest on 14,143*l.* 18*s.* 2*d.* £. s. d.
5 16 2

14,149 14 4

To Richard Beck	-	102	17	2	
To J. Scarplain	-	158	9	2	
To Burd and Hunt	-	126	9	0	
					387 15 4
					13,761 19 0

9. By two days interest on 13,761*l.* 19*s.* 0*d.* 3 15 4

13,765 14 4

To Edward Wastell	-	233	18	0	
To Charles Willis	-	94	12	4	
To William Gumm	-	13	11	8	
To James Vincent	-	9	6	6	
To executors of John Smith		9	6	3	
To Job Spratley	-	21	19	2	
To George Frances	-	39	5	11	
					418 19 10
					13,346 14 6

11. By two days interest on 13,346*l.* 14*s.* 6*d.* 13 13 1

13,350 7 7

To William Dymock	-	238	0	7	
To Thomas Davis	-	100	11	0	
					338 11 7
					13,011 16 0

			<i>£.</i>	<i>s.</i>	<i>d.</i>
May 12.	By one days interest on 13,011 <i>l.</i>	16 <i>s.</i>		1	15 7
			13,013	11	7
	To R. Rawdon	- -		6	10 0
			13,007	1	7
14.	By two days interest on 13,007 <i>l.</i>	1 <i>s.</i> 7 <i>d.</i>		3	11 2
			13,010	12	9
	To James Robson and Robert Faulder	- 22 8 10			
	To Douglas and Lambert	107 15 2			
				130	4 0
			12,880	8	9
16.	By two days interest on 12,880 <i>l.</i>	8 <i>s.</i> 9 <i>d.</i>		3	10 7
			12,883	19	4
	To J. Howarth	- 6 13 6			
	To Charles Chaloner	- 420 0 0			
				426	13 6
			12,457	5	10
19.	By three days interest on 12,457 <i>l.</i>	5 <i>s.</i> 10 <i>d.</i>		5	2 4
			12,462	8	2
	To Joseph Fox	- -		1	10 0
			12,460	18	2
22.	By three days interest on 12,460 <i>l.</i>	18 <i>s.</i> 2 <i>d.</i>		5	2 5
			12,466	0	7

			£.	s.	d.
May 22.	To Thomas Gascoyne	-	-	7	0 0
					12,459 0 7
23.	By one days interest on 12,459 <i>l.</i> 0 <i>s.</i> 7 <i>d.</i>			1	14 1
					12,460 14 8
	To Joseph Desjardines	-	-	91	14 0
					12,369 0 8
24.	By one days interest on 12,369 <i>l.</i> 0 <i>s.</i> 8 <i>d.</i>			1	13 10
					12,370 14 6
	To Raper and Co.	-	-	554	3 4
					11,816 11 2
26.	By two days interest on 11,816 <i>l.</i> 11 <i>s.</i> 2 <i>d.</i>			3	4 9
					11,819 15 11
	To Raby and Co.	-	-	11	5 0
					11,808 10 11
29.	By three days interest on 11,808 <i>l.</i> 10 <i>s.</i> 11 <i>d.</i>			4	17 0
					11,813 7 11
	To John Carbonel	-	50	2	2
	To George Gibson	-	403	3	1
					453 5 3
					11,360 2 8

	£.	s.	d.
June 1. By three days interest on 11,360 <i>l.</i> 2 <i>s.</i> 8 <i>d.</i>	4	13	4
	11,364	16	0
To Mr. Fox's notes to Mr. Feesey -	996	0	0
	10,368	16	0
2. By one days interest on 10,368 <i>l.</i> 16 <i>s.</i>	1	8	4
	10,370	4	4
To William Jacobs -	17	15	6
To J. Smith -	118	1	6
	135	17	0
	10,234	7	4
3. By one days interest on 10,234 <i>l.</i> 7 <i>s.</i> 4 <i>d.</i>	1	8	0
	10,235	15	4
To Thomas Jackman	143	6	10
To the Rev. Mr. Newman Dedham, a number of Mrs. Fox's little bills. -	18	12	10
	161	19	8
	10,073	15	8
5. By two days interest on 10,073 <i>l.</i> 15 <i>s.</i> 8 <i>d.</i>	2	15	2
	10,076	10	10
To Mrs. Fox's annuity, due the 24th instant	75	0	0
	10,001	10	10

June 6. By one days interest on 10,001*l.* 10*s.* 10*d.* 1 7 4
10,002 18 2

To William Ride	-	40	7	11	
To James Bignell	-	17	1	3	
				57	9 2
				9,945	9 0

14. By eight days interest on 9,945*l.* 9*s.* 10 17 11
9,956 6 11

To your draft to Sir John Lambert		1,200	0	0	
				8,756	6 11

23. By nine days interest on 8,756*l.* 6*s.* 11*d.* 10 16 10
8,767 3 9

To John Birch's annuity, with interest		360	0	0	
				8,407	3 9

June 27. By four days interest on 8,407*l.* 3*s.* 9*d.* 4 12 1
8,411 15 10

To Mr. Goodflesh for Mr. Fox's bond to William Bates, 350 <i>l.</i> with interest		462	1	10	
				7,949	14 0

July 8. By eleven days interest on 7,949*l.* 14*s.* 11 19 6
7,961 13 6

[9^r]

To Biddulph and Compa-

ny's bond, with interest 1,794 7 0

To Sir R. Ainslie's debt,

with ditto - 1,109 14 0

2,904 1 0

5,057 12 6

July 17. By nine days interest on 5,057*l.* 12*s.* 6*d.* 6 4 8

5,063 17 2

To Mr. Motteux's annuity, with interest 285 11 6

4,778 5 8

21. By four days interest on 4,778*l.* 5*s.* 8*d.* 2 12 4

4,780 18 0

To your draft to J. Desjardines - 333 0 8

4,447 17 4

23. By two days interest on 4,447*l.* 17*s.* 4*d.* 1 4 4

4,449 1 8

To Vaughan's annuity - - 650 0 0

3,799 1 8

27. By four days interest on 3,799*l.* 1*s.* 8*d.* 2 1 7

3,801 3 3

To Sir John Lambert - - 315 0 0

3,486 3 3

N 2

July 29. By two days interest on 3,486 <i>l.</i> 3 <i>s.</i> 3 <i>d.</i>	0	19	1
To Elizabeth De Bouchett's annuity and	3,487	2	4
bond, with interest - -	314	0	0
	3,173	2	4
August 6. By eight days interest on 3,173 <i>l.</i> 2 <i>s.</i> 4 <i>d.</i>	3	9	6
	3,176	11	10
To James Parnell - -	17	17	0
9. By three days interest on 3,158 <i>l.</i> 14 <i>s.</i> 10 <i>d.</i>	3,158	14	10
	1	5	11
	3,160	0	9
To your draft to Raper and Company	300	0	0
	2,860	0	9
18. By nine days interest on 2,860 <i>l.</i> 0 <i>s.</i> 9 <i>d.</i>	3	10	5
	2,863	11	2
To Mr. Delane. - -	25	3	0
	2,838	8	2
September 16. By twenty-nine days interest on			
2,838 <i>l.</i> 8 <i>s.</i> 2 <i>d.</i> - -	11	5	11
	2,849	14	1
To your draft to Sir John Lambert, 349			
guineas - - -	366	9	0
	2,483	5	1

October 19. By thirty-three days interest on

2,483*l.* 5*s.* 1*d.* - - 11 4 6

2,494 9 7

To Samuel Wegg, Esq. - 9 13 10

2,484 15 9

25. By six days interest on 2,484*l.* 15*s.* 9*d.* 2 0 9

2,486 16 6

To Mr. Oliver Farrer - 773 18 9

1,712 17 9

29. By four days interest on 1,712*l.* 17*s.* 9*d.* 0 18 9

1,713 16 6

To Mr. William Bray - 26 16 0

1,687 0 6

November 12. By fourteen days interest on 1,687*l.* 0*s.* 6*d.* 3 4 8

1,690 5 2

To Mr. Peale - 525 0 0

1,165 5 2

16. By four days interest on 1,165*l.* 5*s.* 2*d.* 0 12 8

1,165 17 10

To Mr. Massey - 548 4 10

617 13 0

The two *last articles* in this Account are the redemptions of the two Annuities, for which the sum of 1692*l.* 1*s.* had been reserved in the first Account; and here it appears that, by Mr. Mackreth's zeal in the service of Mr. Fox, they had been redeemed for 1073*l.*—which is 619*l.* less than the calculation of the *first Account*;—Mr. Mackreth charging himself with interest at five per cent. for the *whole sum retained*, on account of these Annuities, till they were discharged. Indeed, I cannot conclude this long and laborious work, without observing,—that if this is not fair and honourable dealing, I know not by what mode of definition, a just idea of honourable dealing is to be made intelligible to the understandings of mankind.

THE END.



